

By David Torrance

11 October 2021

The Anglo-Irish Treaty, 1921

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Commons of Southern Ireland, and if approved shall be ratified by the necessary legislation.

Decr 6th 1921

On behalf of the
British Delegation

8 May 1900

Auster Chamberlain

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on behalf of the Irish
Delegation
Seán Ó Siadhail (as an t-úrrí)

1203^r
Mícheál Ó Coileáin

Rubén Espíñol

Riobáro Caprún.

E. S. D. Dugan

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Summary

On 11 October 1921 negotiations began at 10 Downing Street which resulted in independence for what was initially known as the Irish Free State. This attempt to settle what was known as the “Irish Question” followed decades of attempts by the UK Parliament to give a degree of autonomy known as “Home Rule” to Ireland.

The resulting Anglo-Irish Treaty gave 26 counties of Ireland a parliament (the Oireachtas) with jurisdiction over most domestic affairs, significant fiscal autonomy and a military force (although the UK was to retain temporary control of several military ports). The Treaty also kept the new Dominion firmly within the then British Empire. A Governor-General was to represent the monarch, while members of the Dáil Éireann (lower house) and Seanad Éireann (upper house) were required to swear an oath of fidelity to the Crown.

The Treaty did not create “partition” but granted the Parliament of Northern Ireland the option of joining the Free State after a period of one month or remaining a devolved part of the United Kingdom. It chose the latter, which, under the terms of the Treaty, triggered the formation of a Boundary Commission charged with revising the boundary between the two parts of Ireland.

Lord Birkenhead, the then Lord Chancellor and one of the UK negotiators in 1921, described the Treaty as “a document which, I believe, will be memorable in history”.

This research paper first examines the historical background to the negotiations that led to the Treaty. It then examines each clause before considering how the Treaty was given the force of law in the UK and Ireland. Finally, it examines changes to the Treaty which occurred during the 1930s.

1

Historical background

Sovereignty over the island of Ireland was claimed by England in the 12th century. English rule, however, was not complete until several centuries later. During the 17th century, the Province of Ulster was also [settled by Protestants from Scotland and England](#).

From the late 13th century there existed a [Parliament of Ireland](#), although this was generally subordinate to that of England and, after 1707, Great Britain.¹ The [Union with Ireland Act 1800](#) and [Act of Union \(Ireland\) 1800](#) (the latter of which was passed by the Irish Parliament) abolished the Irish legislature and declared that “for ever after” the Kingdoms of Great Britain and Ireland would “be united into one Kingdom, by the name of the United Kingdom of Great Britain and Ireland”.²

Union meant Ireland sent a disproportionately large number of MPs and peers to London, 100 and 32 respectively, “while at the same time its native government remained largely colonial in character”.³ A Lord Lieutenant and Governor-General (sometimes known as a “viceroy”) ruled through the [Chief Secretary for Ireland](#), who in turn presided over an array of boards and departments based in Dublin.

A campaign for some degree of [Home Rule for Ireland](#), essentially devolution within the UK, grew during the 19th century and secured the endorsement of the Liberal Party leader, [William Gladstone](#) in 1885. [Attempts to legislate](#) for a devolved parliament in Dublin in 1886 and again in 1893, during Gladstone’s Third and Fourth Ministries, however, failed.⁴

The Third Home Rule Bill was introduced to Parliament in 1912. Unlike its predecessors, this was likely to pass given the passage of the [Parliament Act 1911](#) (which had removed the House of Lords’ absolute power of veto). On this occasion, the idea of treating parts of Ireland differently first arose.

This reflected the strength of feeling among Ulster Unionists, who had mobilised in opposition to the First Home Rule Bill of 1886. Between 1912 and

¹ Most significant in this respect were the 1494 Poynings Law, which gave the English Privy Council a veto, and the 1720 Declaratory Act, which declared that the British Parliament could legislate for Ireland. Both were repealed in 1782

² The Union with Ireland Act 1800 (as amended in 1922 and 1927) remains on the UK statute book. In the Republic of Ireland, the [Statute Law Revision \(Pre-Union Irish Statutes\) Act, 1962](#) repealed the Act of Union (Ireland) 1800, while the [Statute Law Revision Act, 1983](#) repealed the Union with Ireland Act 1800

³ Robert Lynch, *The Partition of Ireland 1918-1925*, Cambridge: Cambridge University Press, 2019, p30

⁴ The first Home Rule Bill was defeated in the Commons, the second in the Lords

1914 various means of “excluding” either six or nine counties of Ulster from the scope of any Home Rule legislation were discussed.

The Government of Ireland Act 1914 was finally granted Royal Assent on 18 September 1914 (without Lords’ consent). This provided for a bicameral Irish Parliament subject to Westminster sovereignty. There was no special provision for Ulster, various amendments having been abandoned. A simultaneous Suspensory Act was passed which suspended the operation of the [Government of Ireland Act 1914](#) for the duration of the First World War.⁵

Following the [Easter Rising](#) of 1916, Irish public opinion hardened in favour of complete independence from the UK rather than devolution within it.⁶ Unionists in Ulster also became more determined to fight for partition.⁷

In the summer of 1916, proposals were presented to both Houses of Parliament which provided for immediate Home Rule for Ireland with a six-county exclusion for Ulster. This proposal reappeared during the proceedings of the unsuccessful 1917-18 [Irish Convention](#), an initiative by [David Lloyd George](#), Prime Minister of a Liberal-Conservative coalition government since 1916, to resolve the Irish Question.⁸

The 1918 general election created a new balance of political forces in the House of Commons. The Coalition government won a large majority, but in Ireland, the republican [Sinn Féin](#) (“Ourselves”) party displaced the pro-Home Rule [Irish Parliamentary Party](#) in all but a handful of seats.

The [Irish Republican Army](#) (IRA) explicitly rejected any form of government imposed by the UK. The [first Dáil Éireann](#) convened in January 1919, comprising Sinn Féin MPs elected to Westminster in 1918 but who had refused to take their seats. The UK neither recognised this unicameral body nor the declaration of an Irish republic.

The legal termination of the First World War following the Paris Peace Conference of 1919 would have ended the suspensory period as applied to the Government of Ireland Act 1914. The UK government either had to allow it to come into operation or introduce new legislation. It chose the latter.

Lloyd George established a Cabinet committee chaired by [Walter Long](#), a former Chief Secretary for Ireland. Initially, Long worked on a federal scheme encompassing Ireland, Scotland, Wales and England, but by October 1919 he had settled upon two devolved legislatures in Ireland alone. These were to be linked by a common “Council of Ireland” comprising representatives of both.⁹

⁵ This suspension was renewed in 1915 and 1916

⁶ See Thomas Hennessey, *Dividing Ireland: World War I and Partition*, London: Routledge, 1998

⁷ Ivan Gibbons, *Partition: How and Why Ireland Was Divided*, London: Haus, 2020, p40

⁸ See Sir Arthur Quekett, *The Constitution of Northern Ireland Part 1*, Belfast: HMSO, 1928, pp11-14

⁹ Ivan Gibbons, p51. The Council of Ireland was to exercise cross-border responsibilities in certain areas

Ulster Unionists reluctantly accepted devolution for what was to become known as “Northern Ireland”.¹⁰ The fourth Government of Ireland Bill was introduced to Parliament on 25 February 1920 during the [war of independence](#) (1919-21), a guerrilla conflict between the IRA and British forces.

The [Government of Ireland Act 1920](#) received Royal Assent on 23 December 1920. In his memoirs, the former Liberal Prime Minister [H. H. Asquith](#) remarked that it was “passed for the purpose of giving to a section of Ulster a Parliament which it did not want, and to the remaining three-quarters of Ireland a Parliament which it would not have”.¹¹

An Order in Council established the devolved Parliaments of Northern and Southern Ireland on 3 May 1921. Elections for both were held on 24 May 1921. In Northern Ireland, the Ulster Unionists won the most seats, while in “Southern Ireland” Sinn Féin candidates treated it as an election to the (still-unrecognised) Dáil. They were returned unopposed in 124 seats.¹² Unionist candidates won the 4 seats elected by graduates of the University of Dublin.

[King George V](#) formally opened the Parliament of Northern Ireland at Belfast City Hall on 22 June 1921.¹³ The Parliament of Southern Ireland met in Dublin on 28 June but only 4 Unionists and appointed Senators attended. It adjourned until 18 July, when it met briefly before adjourning again. The 1920 Act had foreseen a refusal by Sinn Féin “to work the act” in Southern Ireland, but a provision enabling the implementation of “Crown colony” government was not enacted. Instead, the Parliament of Southern Ireland remained in “suspended animation” until 1922.¹⁴

1.1

The Truce

Speculation regarding a “Truce” in the war of independence first emerged in April 1921, but the UK Cabinet disliked the terminology and rejected it at a meeting on 12 May. In an interview with the New York Herald that same month, [Éamon de Valera](#), the president of the Irish republic declared in 1919, expressed willingness to open a dialogue with the UK Prime Minister.

De Valera was also in contact with [Jan Christian Smuts](#), the Prime Minister of the Union of South Africa. Smuts suggested to Lloyd George that the King use his speech opening the Parliament of Northern Ireland to “foreshadow the grant of Dominion status to Ireland”.¹⁵ [Dominion status](#) was the degree of

¹⁰ Patrick Buckland, “Carson, Craig and the Partition of Ireland, 1919-1921”, in Peter Collins (ed), *Nationalism and Unionism: Conflict in Ireland, 1885-1921*, Liverpool: Institute of Irish Studies, 1994, p85

¹¹ Earl of Oxford and Asquith, *Memories and Reflections, 1852-1927*, Vol 2, London: Cassell, 1928, p190

¹² This became known as the [Second Dáil](#)

¹³ For a comprehensive account of the Government of Ireland Act 1920 and its development, see Commons Library Briefing Paper CBP-8884, [Parliament and Northern Ireland, 1921-2021](#), 1 May 2021

¹⁴ Sir Arthur Quekett, pp18-19

¹⁵ Keith Middlemass (ed), Thomas Jones: *Whitehall Diary Volume III – Ireland 1918-1925*, London: Oxford University Press, 1971, pp70-78

autonomy then enjoyed by South Africa, Canada, Newfoundland, Australia and New Zealand.¹⁶

Following his speech on 22 June 1921, the King urged the UK Cabinet to “use the favourable atmosphere to come to a real understanding with Sinn Fein”. Conservative members of the coalition government had begun to soften their position on the Irish Question.¹⁷ On 24 June 1921, Lloyd George invited de Valera and [Sir James Craig](#), the new Prime Minister of Northern Ireland, for talks in London. A Truce was subsequently agreed and came into operation at noon on 11 July 1921. Attacks by the IRA ceased.¹⁸ De Valera met with Lloyd George in London again on 14 July. It was at this meeting that the name “Saorstát Éireann” (Irish Free State) first emerged.¹⁹

The “Proposals of the British Government for an Irish Settlement” were published on 20 July 1921.²⁰ These offered Dominion status to 26 counties of Ireland with the caveat that any agreement “must allow for a full recognition of the existing powers and privileges of the Government of Northern Ireland which cannot be abrogated except by their own consent”. Lloyd George secured agreement from the Cabinet to use the term “Treaty” by invoking precedents from Scotland and South Africa as well as the [Treaty of Limerick](#).²¹

De Valera rejected the UK’s terms on 10 August. Correspondence continued during Lloyd George’s holiday at Gairloch in Scotland. On 7 September 1921 he took the unusual move of convening a [Cabinet meeting in Inverness](#). The Prime Minister feared negotiations “breaking” on Northern Ireland (on which he believed the government “had a very weak case”) rather than on “allegiance and Empire”.²² Finally, on 29 September 1921 Lloyd George invited de Valera:

to a Conference in London on the 11th [of] October, where we can meet your delegates as spokesmen of the people whom you represent, with a view to ascertaining how the association of Ireland with the community of nations known as the British Empire may best be reconciled with Irish national aspirations.²³

De Valera [accepted this invitation the following day](#).

¹⁶ Its extension to Ireland was supported by politicians in South Africa, the United States, the UK Labour Party and by The Times newspaper

¹⁷ John D. Fair has argued that “important internal changes within the Conservative party” were the “determining factor in the outcome of the Anglo-Irish treaty” (“The Anglo-Irish Treaty of 1921: Unionist Aspects of the Peace”, *Journal of British Studies* 12:1, November 1972, p132)

¹⁸ Keith Middlemass, pp79-85

¹⁹ Keith Middlemass, p89. It appeared on a document de Valera presented to Lloyd George.

²⁰ Cmnd 1502

²¹ Keith Middlemass, pp89-91

²² Keith Middlemass, pp111-17. This was because the counties of Fermanagh and Tyrone had Catholic majorities

²³ Cmnd 1539

2

Treaty negotiations

The negotiations which resulted in the Anglo-Irish Treaty began at 10 Downing Street on 11 October 1921 and continued for eight weeks.

Prime Minister David Lloyd George led the UK delegation, which also comprised [Austen Chamberlain](#) (Leader of the House of Commons), [Winston Churchill](#) (Colonial Secretary), [the Earl of Birkenhead](#) (Lord Chancellor), [Sir Laming Worthington-Evans](#) (War Secretary), [Sir Hamar Greenwood](#) (Chief Secretary for Ireland) and [Sir Gordon Hewart](#) (Attorney General for England and Wales).

In a controversial move, Éamon de Valera decided not to participate in the London “conference”. He argued that it would be more “valuable” for him to remain in Dublin.²⁴ At the time, de Valera’s colleague [W. T. Cosgrave](#) remarked that this [“was a team they were sending over and they were leaving their ablest player in reserve”](#).

Writing in 2021, former Taoiseach Bertie Ahern said he believed it “was not smart politics to leave the fledgling Dáil’s leading statesman at home”.²⁵ Others have argued that de Valera knew negotiation meant compromise, and that he did not want to be associated with the failure to achieve the UK’s recognition of the Irish republic.²⁶

Instead, the Irish delegation was composed of [Michael Collins](#) (the Irish republic’s Minister for Finance), [Arthur Griffith](#) (Minister for Foreign Affairs), [Robert Barton](#) (Minister for Economic Affairs), [Éamonn Duggan](#) (a solicitor), [Charles Gavan Duffy](#) (a barrister and the Dáil’s representative in the Vatican), [Erskine Childers](#)²⁷ and [John Chartres](#).

Letters exchanged between de Valera and Lloyd George referred to “Envoy Plenipotentiary from the elected Government of the Republic of Ireland” but the historian Keith Middlemass concluded that there was “no evidence that their credentials were ever officially presented [to] or accepted” by the UK government or the King.²⁸

²⁴ Colum Kenny, *Midnight in London: The Anglo-Irish Treaty Crisis 1921*, Dublin: Eastwood Books, 2021, p34

²⁵ [“Bertie Ahern: Dev was wrong not to lead the 1921 Treaty talks”](#), Irish Times, 24 May 2021

²⁶ David McCullagh, [“Truce and Treaty: Why did de Valera not lead the delegation sent to London”](#), Irish Times, 25 May 2021

²⁷ Childers had worked as a clerk in the UK House of Commons and was secretary to the 1917-18 Irish Convention

²⁸ Keith Middlemass, p119. De Valera had provided his plenipotentiaries with written credentials

In the standard published account of the negotiations, *Peace by Ordeal: The Negotiation of the Anglo-Irish Treaty, 1921*,²⁹ Thomas Packenham ([Lord Longford](#)) identified five main areas of conflict between the UK and Irish delegates: The Crown, Northern Ireland, trade, finance and defence.

The issue of trade centred upon Ireland's ability to impose tariffs, which had not formed part of the UK's proposals of 20 July 1921. Finance focused on Ireland's share of the UK national debt, as well as future expenses for pensions and land annuities. Defence concerned the degree to which the UK would maintain control of certain Irish ports.

The UK delegates' red lines were maintaining the integrity of the British Empire, preventing the creation of an Irish Navy and the imposition of hostile tariffs. The Irish delegates focused on the Crown and Northern Ireland, agreeing that if negotiations broke down it should be on the basis of Irish unity. The most important aspects of the conference were, therefore, what Lord Longford identified as the Crown and the status of Northern Ireland.

2.1

The Crown

The UK's proposals for a settlement centred upon Dominion status, although in 1921 this was not well defined. The Irish legal historian Thomas Mohr has argued that the proposals fell short of the status enjoyed by other Dominions in key areas such as trade, taxation, defence and autonomy from Westminster.³⁰

Dominion status meant that Ireland would become (or remain) a constitutional monarchy, with King George V (represented by a governor-general) as head of state. This was anathema to most of the Irish delegates, who represented the Irish republic declared in 1919. Particularly controversial was the UK's insistence that members of the Irish parliament would have to swear an oath of allegiance to the British monarch.

Other Irish delegates believed there could be a compromise. Arthur Griffith, the acknowledged leader of the Irish negotiators, had long supported the idea of a dual British-Irish monarchy based on the [Hapsburg Empire](#). De Valera had also mooted what he called "external association", which was presented to the UK delegates on 24 October 1921. This envisaged an Irish republic remaining "associated" with the British Empire in areas of common

²⁹ Lord Longford, *Peace by Ordeal: The Negotiation of the Anglo-Irish Treaty, 1921*, London: Sidgwick & Jackson, 1972

³⁰ Quoted in Martin O'Donoghue, "We Should for the Present Stand Absolutely Aloof": Home Rule Perspectives on the Treaty Debates", in Liam Weeks and Mícheál Ó Fathartaigh (eds), *The Treaty: Debating and Establishing the Irish State*, Dublin: Irish Academic Press, 2018, Kindle location 1125-35. The UK official Tom Jones observed that Sir Hamar Greenwood, the "only Colonial in the Cabinet", was more "instinctively sympathetic" to Ireland than his colleagues because he had been born in the Dominion of Canada (Keith Middlemass, p149)

concern. Austen Chamberlain characterised the Irish position as “a republic within the Empire”.³¹

2.2

Northern Ireland

Although Sinn Féin opposed the partition of Ireland under the Government of Ireland Act 1920, by the time Treaty negotiations began the devolved Government and Parliament of Northern Ireland had existed for several months. This meant partition was a reality that had to be addressed by any negotiated agreement. De Valera appeared to acknowledge this, telling the Dáil shortly before the conference began that using “force with Ulster” would not work, and that if the UK recognised the republic then he would favour giving each Ulster county the “power to vote itself out of the Republic if it so wished”.³²

Lloyd George and the UK delegates felt bound by previous pledges not to “coerce” Northern Ireland into a constitutional arrangement it did not support.³³ At the same time, the UK government delayed the formal transfer of services to the Government and Parliament of Northern Ireland (under the 1920 Act) while talks were still ongoing with Sinn Féin.

On 17 October 1921 the Irish delegates presented their counter proposals on Northern Ireland. These involved asking the devolved government to give up its status under the 1920 Act or retain it with reserved powers transferring from Westminster to Dublin. Lloyd George, who had earlier acknowledged the weakness of his government’s position on Northern Ireland, told the UK deputy cabinet secretary Tom Jones that he feared Tyrone and Fermanagh were “going to wreck [a] settlement”.³⁴

Lloyd George attempted to pressure Sir James Craig, the Prime Minister of Northern Ireland, into accepting legislative subordination under an all-Ireland parliament, warning that not to do so would lead to economic dislocation and a damaging customs barrier. In response, Sir James demanded Dominion status for Northern Ireland.³⁵

³¹ Keith Middlemass, p145. This later became a reality when India remained part of the British Commonwealth upon [becoming a republic in 1950](#)

³² Michael Laffan, The Partition of Ireland 1911-25, Dundalk: Dundalgan Press, 1983, p79

³³ Prior to the 1918 general election, the Liberal-Conservative coalition had issued a manifesto in which it ruled out any “forcible submission of the six counties of Ulster to a Home Rule Parliament against their will” (Michael Laffan, p62)

³⁴ Keith Middlemass, p137

³⁵ Bryan A. Follis, A State Under Seige: The Establishment of Northern Ireland 1920-1925, Oxford: Clarendon Press, 1995, pp65-66

2.3

Final negotiations

By the end of October 1921, Lloyd George faced both a vote of censure in the House of Commons and a significant Conservative Party meeting in Liverpool on 17 November. Important to both was a growing “die-hard” revolt among Conservative MPs over Northern Ireland. This section of the party opposed any sort of coercion.

The Prime Minister felt he needed a commitment from the Irish delegates regarding the Crown which would enable him to persuade Northern Ireland to compromise and also face down the Conservative die-hards.³⁶ Lloyd George told several people he would resign if Northern Ireland did not change its position, although several historians have doubted whether this was a serious prospect.³⁷

Lloyd George faced the House of Commons on 31 October 1921 and the vote of censure was defeated by 439 votes to 43. Treaty negotiations resumed on 1 November. On 2 November, Arthur Griffith agreed a document which made Irish acceptance of the Crown contingent upon the UK recognising “the essential unity of Ireland”.³⁸ On 7 November, Lloyd George met with Sir James Craig but he again refused to have anything to do with an all-Ireland parliament. The same day, Lloyd George suggested to his official Tom Jones that:

the 26 Counties should take their own Dominion Parliament and have a Boundary Commission, and that Ulster should have her present powers plus representation in the Imperial Parliament plus the burdens of taxation which we bear.³⁹

On 8 November Tom Jones presented as his own this idea – that a Boundary Commission would revise the partition boundary if Northern Ireland chose not to join with the rest of Ireland – to Michael Collins and Arthur Griffith. Jones implied that if Lloyd George was compelled to resign over Northern Ireland then the most likely outcome would be a die-hard Conservative government led by Andrew Bonar Law. On 13 November, Griffith approved a memorandum stating that he would not obstruct the proposal of a Boundary Commission in advance of the Conservative Party meeting due to take place in Liverpool on 17 November.⁴⁰

³⁶ Keith Middlemass, p150

³⁷ See Lord Longford, pp166-71

³⁸ Keith Middlemass, p154

³⁹ Keith Middlemass, p155. The idea of a boundary commission had existed since 1916. Colum Kenny has identified Lionel Curtis, a UK specialist on Irish affairs, as having revived the idea in early November 1921 (see Colum Kenny, pp110-16)

⁴⁰ Keith Middlemass, pp156-57. Griffith informed de Valera that he had made this commitment to Lloyd George

As a Coalition Liberal, Lloyd George did not attend that meeting, but Austen Chamberlain assured Conservative delegates that there would be no coercion of Northern Ireland. This was enough to prevent a die-hard rebellion.

By 28 November, the outstanding issue in the negotiations appeared to be allegiance to the British Crown, which the Irish delegates repeatedly refused to accept. The UK delegates compromised by stating that the position of Ireland would be akin to that of Canada or any other Dominion. This satisfied the Irish negotiators.

On 29 November it was agreed that the Parliament of Northern Ireland would have a year in which to decide whether it was to form a devolved part of the new Dominion or remain part of the UK. The same day, Sir James Craig told the Northern Ireland House of Commons that Lloyd George had informed him that:

By Tuesday next either the negotiations would have broken down or the Prime Minister will send me new proposals for consideration by the [Northern Ireland] Cabinet. In the meantime the rights of Ulster will be in no way sacrificed nor compromised.⁴¹

On 1 December the UK delegates proposed a new draft of the Irish oath of allegiance, which remained a sticking point with the Irish delegates. This made the “Constitution of the Irish Free State” the primary focus of the oath and reduced reference to the King as “head of state” in Ireland.⁴² The UK delegates continued to reject the Irish proposal of “association” with, rather than allegiance to, the Crown.

Returning to London from Dublin on 3 December, the Irish delegates also fought back on the clauses concerning Northern Ireland, prompting Lloyd George to threaten unilateral ratification of the Treaty before Christmas. The two delegations appeared as far apart as they had been in October, with the conference close to breaking point.

Michael Collins and Arthur Griffith asked Lloyd George to get some sort of statement from Sir James Craig regarding an all-Ireland parliament. In response, Lloyd George met privately with Collins and used the Boundary Commission proposal as a lever. Collins was left with the strong impression that this would result in the transfer of Fermanagh and Tyrone to the Irish Free State.⁴³ Importantly, however, the wording of the Boundary Commission clause had been reworded to include reference to “economic and geographical conditions” as well as the “wishes of the inhabitants”.

When Griffith attempted to break up the talks over Northern Ireland, Lloyd George produced the memorandum of 13 November which stated that Griffith

⁴¹ Keith Middlemass, p178

⁴² Jason K. Knirck, *Imagining Ireland's Independence: The Debates over the Anglo-Irish Treaty of 1921*, Plymouth: Rowman & Littlefield, 2006, p135

⁴³ Keith Middlemass, p181. Collins apparently believed this would make what remained of Northern Ireland economically unviable

would not repudiate the idea of a Boundary Commission. Griffith backed down. The Prime Minister then conceded fiscal autonomy, which meant Ireland would be free to impose tariffs.

Exerting further pressure on the Irish delegates, Lloyd George said a destroyer was waiting to sail for Belfast that evening (5 December) with a decision for Sir James Craig. If their answer was no to membership of the British Empire then it would mean a “terrible war”. Griffith agreed to sign the Treaty. As a final concession, the period in which Northern Ireland could exercise its “opt out” was reduced from one year to one month. Having retired to 22 Hans Place in London, Michael Collins also agreed to sign followed by the other Irish delegates.⁴⁴

2.4

Treaty signed

The Articles of Agreement for a Treaty, generally known as the [Anglo-Irish Treaty](#), was signed at 2.15am on 6 December 1921.⁴⁵ For the first time, the UK delegates walked around the negotiating table to shake hands with the Irish delegates.

Miss Stephenson, who later became Lady Lloyd-George, later recalled that:

Just before 3 o'clock [Lloyd George] himself came into my room, exhausted but triumphant, and handed me the Treaty documents with its historic signatures and seal. “Lock it up carefully,” he said, and I did so, in a despatch box. There it lay for many years, until I unlocked the despatch box on going through L.G.'s papers after his death, and discovered it again.⁴⁶

Later on 6 December, Arthur Griffith also came to terms with the Southern Unionists, agreeing to give them fair representation in the Free State parliament.

David Lloyd George won praise for apparently having answered the long-standing Irish Question. King George V telegraphed to say he was “indeed happy in some small way to have contributed by my speech at Belfast to this great achievement”.⁴⁷ Friends of the Prime Minister later presented him with a piece of silver which called him (in an inscription) “the solver of the

⁴⁴ Keith Middlemass, p183

⁴⁵ To be accurate, the three Irish delegates present signed. Gavan Duffy added his signature later that morning, while Duggan's was cut from a menu and pasted in (see cover image) given that he had already returned to Dublin (Mícheál Ó Fathartaigh and Liam Weeks, *Birth of a State: The Anglo-Irish Treaty*, Dublin: Irish Academic Press, 2021, p51)

⁴⁶ Quoted in Lord Beaverbrook, *The Decline & Fall of Lloyd George*, London: Collins, 1963, p123. The signatures on the last page of the Treaty were photographed for distribution to the press before it was locked up

⁴⁷ *The Times*, 7 December 1921

insoluble".⁴⁸

Lord Longford's account of the negotiations largely blamed Arthur Griffith for abandoning the Irish goal of recognition for the republic and ceding too much ground on partition.⁴⁹ J. J. Lee, another historian, has argued that "breaking" on Northern Ireland would not have achieved anything:

The bottom line that is so easily forgotten in the welter of discussion about the diplomacy of the Treaty negotiations is that Britain carried the far bigger gun. Until 5 December [1921] it was kept more or less discreetly hidden. Then Lloyd George pulled it out, laid it on the table, and threatened to use it.⁵⁰

Tim Pat Coogan, a biographer of Michael Collins, believes that Griffith and Collins felt the Cabinet in Dublin was unrealistic and therefore chose to pursue their own negotiating strategy.⁵¹ Colum Kenny has concluded that the Irish delegation, at the promptings of de Valera, spent too much time negotiating concessions to the wording of the oath of allegiance and not enough time on the Boundary Commission.⁵²

When de Valera discovered the terms of the agreement he tried to reject them but was over-ruled by his Cabinet. It decided that the Dáil would reach a final decision.

⁴⁸ Lord Beaverbrook, p123

⁴⁹ Jason K. Knirck, pp2-3

⁵⁰ J. J. Lee in Gabriel Doherty and Dermot Keogh (eds), *Michael Collins and the Making of the Irish State*, Cork: Mercier Press, 2002

⁵¹ Tim Pat Coogan, *The Man Who Made Ireland: The Life and Death of Michael Collins*, Niwot, CO: Roberts Rinehart, 1992, p298

⁵² ["Claim of British trickery in Anglo-Irish Treaty talks 'debunked' by memo"](#), Irish Times, 25 May 2021

3

The Anglo-Irish Treaty

The [Final text of the Articles of Agreement for a Treaty between Great Britain and Ireland as signed](#) is available online. It includes 18 Articles and an Annex.

3.1

Treaty Articles

Article 1

Article 1 states that “Ireland” shall have the “same constitutional status in the Community of Nations known as the British Empire as the Dominion of Canada, the Commonwealth of Australia, the Dominion of New Zealand and the Union of South Africa”.⁵³ The new Dominion was to be “styled and known as the Irish Free State”.

The use of the word “Ireland” in the first sentence has led some scholars to conclude that the Irish Free State was to be defined, at least initially, as encompassing all 32 counties. However, the definition is qualified by Articles 11-14. In the opinion of Brigid Hadfield, Article 1 was “to be construed as excluding Northern Ireland, certainly in terms of United Kingdom law”.⁵⁴

Article 2

Article 2 states that subject to subsequent provisions, the position of the Irish Free State “in relation to the Imperial Parliament and Government [Westminster] and otherwise shall be that of the Dominion of Canada, and the law practice and constitutional usage governing the relationship of the Crown or the representative of the Crown and of the Imperial Parliament to the Dominion of Canada shall govern their relationship to the Irish Free State”.

This Article further extended the analogy between the Free State and the Dominion of Canada, although there was subsequent disagreement as to whether this meant the practice relating to Canada at that point (December 1921) or as it was to develop.

⁵³ It did not mention the fifth Dominion, Newfoundland, which later became the tenth Province of Canada

⁵⁴ Brigid Hadfield, *The Constitution of Northern Ireland*, Belfast: SLS Legal Publications, 1989, p35

Article 3

Article 3 states that the “representative of the Crown” in Ireland shall be appointed in “like manner” to the Governor-General of Canada and “in accordance” with “the practice observed” in the making of such appointments.

This meant the Governor-General of the Irish Free State was to be appointed by the King on the advice of his UK ministers, rather than on the advice of the Dominion government in question. As it happened, the UK government took care to appoint someone acceptable to Sinn Féin. Initially, the Governor-General of the Irish Free State opened sessions of the Oireachtas, as was the practice in other Dominions, although this was later dropped.

Article 4

Article 4 included the text of an oath to be taken by “Members of the Parliament of the Irish Free State”:

I do solemnly swear true faith and allegiance to the Constitution of the Irish Free State as by law established and that I will be faithful to H.M. King George V, his heirs and successors by law, in virtue of the common citizenship of Ireland with Great Britain and her adherence to and membership of the group of nations forming the British Commonwealth of Nations.

Strictly speaking, therefore, the oath was to the Free State constitution followed by a pledge of fidelity to the King. The wording of this oath had been one of the most controversial and time-consuming aspects of the Treaty negotiations.

For the first time in an official UK document, the term “Commonwealth” was used as an alternative to “Empire”, an acknowledgement of Irish opposition.⁵⁵

Article 5

Article 5 dealt with finance, stating that the Irish Free State would “assume liability” for servicing a proportion of the UK’s public debt and a share in the payment of war pensions “as existing” on 6 December 1921. If there was no agreement as to the proportion, there was to be “arbitration of one or more independent persons being citizens of the British Empire”.⁵⁶

⁵⁵ According to Thomas Mohr, during this period those who favoured greater Dominion autonomy generally used the term “Commonwealth”, while those who favoured the maintenance of strong links between the Dominions and the UK used the term “Empire” (“Irish Law Journals and the Emergence of the Irish State, 1916–22”, *Journal of European Periodical Studies* 3:1, Summer 2018, pp29–48)

⁵⁶ The [Compensation \(Ireland\) Commission](#) was established jointly by the UK and Provisional governments in 1922. It sat in Ireland under the presidency of, initially, Lord Shaw of Dunfermline, and subsequently, Sir Alexander Wood-Renton. Wood-Renton was a Scottish-born former Chief Justice of Ceylon

Article 6

Article 6 dealt with defence, stating that “His Majesty’s Imperial Forces” would undertake the “defence by seas” of Great Britain and Ireland until an arrangement had been made for the Irish Free State to undertake “her own coastal defence”. This was not to prevent the construction of customs or fisheries vessels and was subject to review “at a Conference of Representatives of the British and Irish Governments” to be held in late 1926.⁵⁷

Article 7

Article 7 stated that the Government of the Irish Free State shall “afford to His Majesty’s Imperial Forces” harbour “and other facilities” in peace and in war. These facilities became known as “Treaty Ports” (see Annex below). The model was South Africa, which was still subject to “entrenched” clauses under the South Africa Act 1909, one of which gave the UK the right to use a naval base at Simon’s Town.⁵⁸ This Article made Free State neutrality in time of war impossible.

Article 8

Article 8 stated that the Irish Free State could only establish and maintain a “military defence force” in proportion to its population vis-à-vis Great Britain. This was breached during the Irish Civil War and only brought into proportion by 1925.

Article 9

Article 9 stated that the ports of Great Britain and the Irish Free State “shall be freely open to the ships of the other country on payment of the customary port and other dues”.

Article 10

Article 10 obliged the Irish Free State to pay “fair compensation” to judges, officials, policemen and other public officials “discharged by it or who retire in consequence of the change of Government effected in pursuance hereof”. The terms of this compensation had to at least be as good as that included in the Government of Ireland Act 1920.

A second clause exempted from any compensation scheme the Auxiliaries or Black and Tans, for whom the UK government was to be liable. Only in 1929 was agreement reached between the UK and Free State governments to pay compensation on the most favourable terms jointly.⁵⁹

⁵⁷ This review did not take place

⁵⁸ This was transferred to South Africa in 1957

⁵⁹ Mícheál Ó Fathartaigh and Liam Weeks, Birth of a State, p208

Article 11

Article 11 stated that:

Until the expiration of one month from the passing of the Act of Parliament for the ratification of this instrument, the powers of the Parliament and the Government of the Irish Free State shall not be exercisable as respects Northern Ireland and the provisions of the Government of Ireland Act, 1920, shall so far as they relate to Northern Ireland remain of full force and effect [...]

It further stated that no election could be held for members of the Free State parliament for constituencies in Northern Ireland unless a resolution was passed by both Houses of the Parliament of Northern Ireland before the end of what became known as the “Ulster Month”.

Article 12

Article 12 stated that if before the expiration of “the said month” an address (resolution) was presented to His Majesty by both Houses of the Parliament of Northern Ireland, then the powers of the Parliament and Government of the Irish Free State “shall no longer extend” (at the end of the Ulster Month) to Northern Ireland, while the provisions of the Government of Ireland Act 1920 would “continue to be of full force and effect”.

It further stated that were the Parliament of Northern Ireland to present such an Address, then a Commission:

consisting of three Persons, one to be appointed by the Government of the Irish Free State, one to be appointed by the Government of Northern Ireland and one who shall be Chairman to be appointed by the British Government shall determine in accordance with the wishes of the inhabitants, so far as may be compatible with economic and geographic conditions, the boundaries between Northern Ireland and the rest of Ireland [...]

While the Irish delegates believed this new boundary would only involve territorial transfers from Northern Ireland to the Free State, the wording of Article 12 left open the possibility of transfers in the other direction.

Nevertheless it confirmed a border created in May 1921. The Irish historian Ronan Fanning called Articles 11 and 12 “fig leaves to cover the Irish negotiators’ impotence to end partition”, thus maintaining the “polite fiction” of Ireland’s “essential unity”.⁶⁰

⁶⁰ Ronan Fanning, *Fatal Path: British Government and Irish Revolution 1910-1922*, London: Faber & Faber, 2013, p314 & p316

Article 13

Article 13 stated that the powers of the Parliament of Southern Ireland to elect members of the Council of Ireland would be transferred to the parliament of the Irish Free State. The Council of Ireland had been created by the Government of Ireland Act 1920 and intended as a means by which Northern and Southern Ireland would deal with cross-border issues such as railways, fisheries and animal disease.

Article 14

Article 14 stated that after the expiration of the “Ulster Month”, if no address had been presented to the King then the devolved Parliament and Government of Northern Ireland shall “continue to exercise as respects Northern Ireland the powers conferred on them by the Government of Ireland Act, 1920”, but with responsibility for reserved matters (and therefore sovereignty) transferred from Westminster to Dublin.

Article 15

Article 15 stated that the Government of Northern Ireland and the “provisional Government of Southern Ireland” could “meet for the purpose of discussing” the responsibilities of the Council of Ireland as they related to various matters in Northern Ireland.

Article 16

Article 16 stated that the parliaments of the Irish Free State and Northern Ireland could not “make any law as either directly or indirectly” to endow any religion or discriminate in its application to educational institutions. This Article replicated similar provisions in the Government of Ireland Act 1920 and was intended to guard against religious discrimination.

Article 17

Article 17 provided for the provisional “administration of Southern Ireland” during the interval between the signing of the Treaty and the constitution of the Irish Free State twelve months later. It obliged the UK government to take “the steps necessary to transfer to such provisional Government the powers and machinery requisite for the discharge of its duties”.

Article 18

The final Article stated that the “instrument” was to be submitted by “His Majesty's Government for the approval of [the UK] Parliament” and by the Irish signatories “to a meeting summoned for the purpose of the members elected to sit in the House of Commons of Southern Ireland”. If approved by both, then it “shall be ratified by the necessary legislation”.

The wording suggested that ratification by the Second Dáil would be acceptable given that Sinn Féin had treated the May 1921 election to the Parliament of Southern Ireland (under the 1920 Act) as an election to that body.⁶¹ This appeared to treat Ireland as a sovereign party to the Treaty.

Annex

An Annex to the Treaty listed the “facilities” set out in Article 7 as the Dockyard Ports at Berehaven, Queenstown (present-day Cobh), Belfast Lough and Lough Swilly, with related arrangements for aviation, oil fuel storage, submarine cables and wireless stations. Belfast Lough was included on the basis that Northern Ireland might decide to join the Free State.

⁶¹ The UK had declared the first Dáil as constituted in 1919 to be illegal

4

Treaty debates

In accordance with Article 18 of the Treaty, its provisions required approval by the UK Parliament and “a meeting” of those elected to the Parliament of Southern Ireland. The Treaty was debated in the UK Parliament and the Irish Dáil during December 1921 and encountered opposition in both.

4.1

The UK Parliament

The UK Parliament was convened on 14 December for the sole purpose of considering the Treaty. King George V said:

It was with heartfelt joy that I learnt of the Agreement reached after negotiations protracted for many months and affecting the welfare not only of Ireland but of the British and Irish races throughout the world. It is my earnest hope that by the Articles of Agreement now submitted to you the strife of centuries may be ended and that Ireland, as a free partner in the Commonwealth of Nations forming the British Empire, will secure the fulfilment of her national ideals.⁶²

Both Houses of Parliament were to make an humble Address by way of Reply to the King’s Speech.⁶³ This stated that:

Having taken into consideration the Articles of Agreement presented to us by Your Majesty’s Command, we are ready to confirm and ratify these Articles in order that the same may be established for ever by the mutual consent of the peoples of Great Britain and Ireland, and we offer to Your Majesty our humble congratulations on the near accomplishment of that work of reconciliation to which Your Majesty has so largely contributed.⁶⁴

The Prime Minister, David Lloyd George, said:

No agreement ever arrived at between two peoples has been received with so enthusiastic and so universal a welcome as the Articles of Agreement which were signed between the people of this country and the representatives of the Irish people on the 6th of this month. They have been received in every quarter in this country with

⁶² [HC Deb 14 December 1921 \[Commons Chamber\]](#)

⁶³ Austen Chamberlain later explained that this means of ratification was “founded [...] on a precedent which had prevailed uninterruptedly up to the year 1890”

⁶⁴ [HC Deb 14 December 1921 \[Commons Chamber\]](#)

satisfaction and with relief. They have been received throughout the whole of His Majesty's Dominions with acclaim.⁶⁵

The House of Commons went on to debate the Treaty on 15 and 16 December 1921. H. H. Asquith, the former Liberal Prime Minister and a long-standing supporter of Dominion status for Ireland, spoke first:

It is because this Treaty—Treaty is the right word to apply to it—this instrument of Agreement, this Treaty between two peoples, as far as I can judge, gives the full substance of self-government without ignoring special local conditions, that I heartily commend it to the acceptance of the House.⁶⁶

Colonel John Gretton, a leading “die-hard” Conservative MP, proposed an amendment to the humble Address. This expressed regret:

that the proposed settlement of the government of Ireland [...] involves the surrender of the rights of the Crown in Ireland, gives power to establish an independent Irish Army and Navy, violates pledges given to Ulster, and fails to safeguard the rights of the loyalist population in Southern Ireland.

Colonel Gretton added that:

We are inviting everybody throughout the world to come to the British Government with sufficient violence and persistence in outrage, to insist on getting what they want, and we shall be told of another great act of statesmanship, another great, glorious and generous concession. This policy is destructive, ruinous, and fatal.⁶⁷

Winston Churchill, a signatory to the Treaty, disputed that it represented a humiliation:

No doubt England [sic] is conceding more to Ireland in this Treaty than she has as a nation ever been willing to concede before, and no doubt she has done it, not only with a view to the future, but with a sincere desire to end a period of brutal and melancholy violence [...] It is not as a humiliation that this event is viewed by the world or by the Empire. It is as a great and peculiar manifestation of British genius, at which the friends of England all over the world have rejoiced. Every foe of England has been dumbfounded.⁶⁸

An important intervention came from Andrew Bonar Law, the former Conservative Party leader and a long-standing champion of the Ulster Unionists. Lloyd George had been careful to secure his support during the Treaty negotiations. Taking care not to offend his die-hard colleagues (the

⁶⁵ [HC Deb 14 December 1921 \[Commons Chamber\]](#)

⁶⁶ [HC Deb 15 December 1921 \[Irish Free State\]](#)

⁶⁷ [HC Deb 15 December 1921 \[Irish Free State\]](#)

⁶⁸ [HC Deb 15 December 1921 \[Irish Free State\]](#)

label, he said, was “not an insult”), he nevertheless politely “differed” from the position taken by his “intimate friend” Lord Carson:

Let me say at the outset that I am in favour of this Agreement [...] For a time it looked as if there might be an attempt to compel Ulster to go into an All-Ireland Parliament against her will. That would have seemed to me an impossible thing, and I am glad to see that the fear has turned out to be quite unjustified [...] It seems to me now that it would have been impossible to present any other alternative policy except this—that we would give to the South and West of Ireland what the Prime Minister has been ready to agree to, and that Ulster should be kept absolutely, if she wished it, within the United Kingdom.⁶⁹

Sir William Allen, however, argued that while there may not have been any “physical coercion” of Northern Ireland, there was “in every line of this Treaty a moral coercion”, with Article 12 stating that Northern Ireland was “to suffer the penalty of having our boundaries remodelled” should it decide not to join the Irish Free State.⁷⁰

Sir Laming Worthington-Evans, another signatory to the Treaty, said:

we may not secure immediately a better Government, but at least we shall secure a more friendly people, a people who will turn their eyes off us as their governors and concentrate them upon their own representatives who will have the responsibilities of government and will realise the difficulties of Empire [...]⁷¹

Arthur Henderson, the Labour Party chief whip, pledged his party’s support:

The outstanding fact of the Treaty is that it means peace. That is a consideration beyond measure [...] the most permanent action in favour of peace is for us to endorse as speedily as possible the great work of the Prime Minister and his colleagues and to ratify the Treaty.⁷²

Hugh O’Neill, the Ulster Unionist MP, accused the Prime Minister of being in “flagrant violation of his written pledge, making a Treaty with a third party, without a word of consultation with the Ulster people, the effect of which may be radically to alter the boundaries within which they now have jurisdiction”.⁷³

Austen Chamberlain (also a Treaty signatory) later answered Ulster Unionist complaints that Northern Ireland had “automatically” been placed in an all-Ireland parliament:

⁶⁹ [HC Deb 15 December 1921 \[Irish Free State\]](#)

⁷⁰ [HC Deb 15 December 1921 \[Irish Free State\]](#)

⁷¹ [HC Deb 15 December 1921 \[Irish Free State\]](#)

⁷² [HC Deb 16 December 1921 \[Irish Free State\]](#)

⁷³ [HC Deb 16 December 1921 \[Irish Free State\]](#)

Ulster remains under this Treaty, as I promised that she should remain, mistress of her own fate. One of the hon. Members for Belfast complained that she was brought within the ambit of the Treaty, and then left to vote herself out. Yes, but until she has taken her decision, the Parliament of the Irish Free State has no authority in Northern Ireland, and, if her decision be, as evidently it is going to be, that at the present time she will not join in an Irish Free State, the Irish Free State Parliament in Dublin will never exercise any authority within the boundaries of Northern Ireland.⁷⁴

Chamberlain also believed the Commons' deliberations would "rank as one of the greatest Debates in the history of this House, alike in the importance of the subject with which it has dealt, and in the character of more than one of the speeches which have been delivered".⁷⁵

On 16 December 1921, the House of Commons voted by 401 to 58 to present an Address to the King approving the Treaty. An identical Address sent by the House of Lords was carried by 166 votes to 47 on 19 December 1921.

During the Lords debates on the Treaty, Lord Carson⁷⁶ criticised the manner in which Parliament was to give its approval:

It is brought out one morning cut and dried, signed, sealed, and delivered; and before making this great act of constitutional change, which is to break up the United Kingdom [...] you are not to present this to Parliament or to the country, but you are to advise His Majesty to give his consent. I say there never was a greater outrage attempted upon constitutional liberty than this Coalition Government have attempted at the present time.⁷⁷

Lord Sydenham described the Treaty as a "stupendous surrender" and questioned whether the Irish people really desired independence.⁷⁸

Upon the prorogation of Parliament on 19 December the King said he had:

received with deep satisfaction the assurance of your approval of the Articles of the Irish Agreement and of your readiness to give effect to its provisions.⁷⁹

⁷⁴ [HC Deb 16 December 1921 \[Irish Free State\]](#)

⁷⁵ [HC Deb 16 December 1921 \[Irish Free State\]](#)

⁷⁶ Sir Edward Carson had joined the House of Lords as a Lord of Appeal in Ordinary (or Law Lord) in June 1921

⁷⁷ [HL Deb 14 December 1921 \[Address In Reply To His Majesty's Most Gracious Speech\]](#)

⁷⁸ [HL Deb 16 December 1921 \[Address In Reply To His Majesty's Most Gracious Speech\]](#)

⁷⁹ [HL Deb 19 December 1921 \[His Majesty's Speech\]](#)

4.2

Dáil Éireann

The Irish Cabinet met on 8 December 1921 and approved the Treaty by 4 votes to 3. De Valera publicly condemned the Treaty before the Dáil met for the first of 15 days of debate on 14 December.⁸⁰

Members of the Dáil were divided between those who accepted the Treaty as the best possible outcome and those who wanted to hold out for an all-Ireland republic. According to historian Jason K. Knirck, “pro-Treatyites talked largely of practical politics, while anti-Treatyites focused on symbols and ideals. Both sides looked at the Treaty differently, and that made bridging the gulf between them extraordinarily difficult.”⁸¹

During the debates, Arthur Griffith (the acknowledged leader of the Irish delegates) argued that while the Treaty was not ideal it protected vital Irish interests.⁸² Gavan Duffy, another signatory, said:

We lost the Republic of Ireland in order to save the people of Ireland... [My] heart is with those who are against the Treaty, but my reason is against them, because I can see no rational alternative.

Pro-Treaty TDs (Teachta Dála, or MPs) also claimed that the overwhelming majority of the Irish public supported the Treaty and that the Irish Free State’s constitutional status would develop over time.⁸³ Michael Collins told the Dáil in January 1922 that the Treaty granted “not the ultimate freedom that all nations desire and develop to, but the freedom to achieve it”.⁸⁴

Anti-Treaty TDs emphasised the continuing role of the King and Governor-General in the Free State’s constitution, as well as the Treaty Ports and the abandonment of the republic. The oath of allegiance dominated. During the debates, de Valera produced his [Document Number 2](#), an alternative Treaty which revisited the idea of “external association”.⁸⁵

This replicated the Northern Ireland clauses of the Treaty as agreed, while a later version of Document Number 2 placed them in an appendix. Only 20 TDs mentioned Northern Ireland in their contributions.⁸⁶ Pro-Treaty TDs argued

⁸⁰ There were 12 public sessions and 3 private. Records of the private debates were not made public until the 1970s

⁸¹ Jason K. Knirck, p9

⁸² During the debates, Griffith produced a letter from David Lloyd George clarifying that the Governor-General would be chosen by the Free State government; that the Free State could submit a claim regarding what proportion of UK national debt it ought to pay; and that it would be co-equal with the other nations of the British Commonwealth (Mícheál Ó Fathartaigh and Liam Weeks, Birth of a State, p99)

⁸³ Jason K. Knirck, pp125-27. By 7 January 1923 some 328 public bodies had voted to support the Treaty with just 5 rejecting it

⁸⁴ Keith Middlemass, pxxii

⁸⁵ Jason K. Knirck, p152

⁸⁶ Jason K. Knirck, p152. Ivan Gibbons observed that Northern Ireland only occupied 9 out of 338 paragraphs of public Treaty debates between December 1921 and January 1922 (Ivan Gibbons, p69)

that as de Valera had already committed not to coerce “Ulster” by force, then there was no alternative to Article 12 and a Boundary Commission. Some of those opposed to the Treaty believed that fighting should resume, in an effort to force Northern Ireland into an all-island state.⁸⁷

On 7 January 1922 the Dáil voted by 64 votes to 57 in favour of the Treaty. In his account of the debates, Frank Gallagher described a long silence following the vote, after which de Valera spoke before putting his head in his hands and breaking down in tears, as did most TDs.⁸⁸

On 9 January 1922 de Valera resigned as president of the republic and his attempt to be re-elected was narrowly defeated by 60 votes to 58 (Pro-Treaty TDs argued that it would be unsustainable for an anti-Treaty president to implement the Treaty). Anti-Treaty TDs walked out of the Dáil in protest and Arthur Griffith became the new president of the Irish Republic.⁸⁹

It remained for members elected to the Parliament of Southern Ireland to meet and give their approval to the Treaty. Arthur Griffith summoned them to convene at the Mansion House in Dublin, where they took less than an hour to give their unanimous approval.⁹⁰

The Provisional Government formed on 16 January 1922 was also drawn from the Parliament of Southern Ireland as elected in May 1921. At the Council Chamber in Dublin Castle, the historic seat of British power in Ireland, Michael Collins handed a copy of the Treaty as agreed to Lord FitzAlan, the Lord Lieutenant. FitzAlan congratulated Collins and said he was now duly installed as Chairman of the Provisional Government.

The Union flag was lowered and British troops began to leave Ireland. Later in January Collins and other members of the Provisional Government travelled to London to make arrangements for the transfer of functions under Article 17 of the Treaty.⁹¹ The Dáil carried on, with republican opponents of the Treaty presenting it as a more legitimate legislature than the parliament of the Irish Free State included in the Treaty.

⁸⁷ Colum Kenny

⁸⁸ Frank Gallagher, *The Anglo-Irish Treaty*, London: Hutchinson, 1965

⁸⁹ Jason K. Knirck, p167

⁹⁰ Those present largely corresponded with members of the Dáil with the exception of one person elected for a constituency in Northern Ireland. Under the 1920 Act, Lord FitzAlan ought to have convened the meeting, but in the event this was done by Arthur Griffith as “Chairman of the Irish Delegation of Plenipotentiaries”

⁹¹ Cmnd 1911, “Heads of Working Arrangements for Implementing the Treaty”

5

Ratifying legislation and the Irish constitution

The Anglo-Irish Treaty did not explicitly require the Irish Free State to draft and adopt a written constitution, although this appears to have been the expectation of both the UK and Provisional Governments.⁹² A constitution was only mentioned once, in Article 4 (regarding the oath). Nor did the Treaty state that it would “sit above” the Free State constitution, but again both governments understood this to be the case.⁹³

On 7 February 1922 the UK Parliament met for the first time since debating the Treaty late the previous year. The King’s Speech said it would “be invited at an early date to consider such measures as may be necessary to give effect to the Agreement”.⁹⁴

During the Debate on the Address, Prime Minister David Lloyd George explained that there would be two stages to “give effect to the Agreement for a Treaty”:

There is the framing of the Constitution of the Free State which will take time. That will be framed in Ireland exactly as it was framed in Australia, Canada, and South Africa. It will be framed by representatives of the people themselves and will be incorporated and endorsed and registered by the British House of Commons in order to give effect to it throughout the Empire.

Until that constitution had been framed, the UK Parliament would legislate to equip “a body in Ireland [...] with the necessary authority to exercise the functions of Government”. Lloyd George said a Bill would soon be introduced to this end. He continued:

It is probable, though it is not for us to decide, that it will be found desirable to seek the opinion of the electors of Ireland upon the Treaty and the body that is elected will have the character of a Constituent Assembly which will frame the Constitution [...] When the

⁹² Michael Collins, the Chairman of the Provisional Government, established a Constitution Committee in early 1922

⁹³ Laura Cahillane and Paul Murray, “The Treaty: An Historical and Legal Interpretation” in Liam Weeks and Mícheál Ó Fathartaigh (eds), *The Treaty: Debating and Establishing the Irish State*, Dublin: Irish Academic Press, 2018

⁹⁴ Henry Harrison, *Ireland and the British Empire*, London: Robert Hale & Co, 1937, p93

constitution is framed, [the UK] Parliament will have an opportunity of discussing the whole situation.⁹⁵

Ratification of the Treaty was therefore to take place via two Acts of the UK Parliament.

On 18 March 1922, meanwhile, the IRA split. “Regulars” loyal to the Provisional Government were faced by “Irregulars”, the self-styled “Army of the Irish Republic”. The Irregulars joined with de Valera’s Republican Party to form the main opposition to the Treaty and Provisional Government.

5.1

Irish Free State (Agreement) Act 1922

The first of two ratifying statutes, the Irish Free State (Agreement) Act 1922, received Royal Assent on 31 March 1922.⁹⁶ This gave legal force to certain provisions of the Treaty, including Article 17, which provided that the UK government could by Order in Council transfer functions to the Provisional Government of the Irish Free State.

On 1 April 1922, the [Provisional Government \(Transfer of Functions\) Order 1922](#) transferred the administration of public services in “Southern Ireland” to the departments and officers of the Provisional Government. The ministerial appointments of January 1922 thus became official and were announced in the new Free State gazette, [Iris Oifigiúil](#), on 4 April 1922.

The Irish Free State (Agreement) Act 1922 also enabled the Lord Lieutenant of Ireland formally to dissolve the Parliament of Southern Ireland within four months of the Act’s passage.⁹⁷ And, importantly, it provided for the election of a body to be called “House of the Parliament”, which was the “Constituent Assembly” announced by Lloyd George on 7 February.

The text of the Treaty was set forth in a Schedule, but Section 1(5) stated that the Act would “not be deemed the Act of Parliament for the ratification” of Article 11 of the Treaty, which concerned the “Ulster Month”.⁹⁸

This was due to confusion as to when this month – during which the Parliament of Northern Ireland would determine its constitutional future – was to begin. Some argued it should be 31 March 1922, but it was agreed by

⁹⁵ [HC Deb 7 February 1922 \[Most Gracious Sovereign\]](#) The intention at this stage was to hold an election for the “Constituent Assembly” in March or April, although this timetable later slipped

⁹⁶ This Act represented the first occasion on which the term “Commonwealth” was used in a UK statute. Like many statutes from this period, it is not available online

⁹⁷ It was formally dissolved on 27 May 1922 and the Lord Lieutenant by proclamation called “a Parliament to be known as and styled the Provisional Parliament”

⁹⁸ Irish courts have, however, held that the Treaty was in fact ratified by the Irish Free State (Agreement) Act 1922

the UK and Provisional governments that it would instead be triggered following the second ratifying Act in December 1922.

5.2

Irish Free State constitution

The Provisional Government's Constitution Committee produced three draft constitutions for the Irish Free State known as Drafts A, B and C.⁹⁹ Draft B was presented to the UK government in May 1922.

Draft B gave only token recognition to the Crown and a Governor-General, omitted the oath and made no reference to a right of appeal to the Judicial Committee of the Privy Council.¹⁰⁰ Instead, the draft constitution stressed the finality of decisions made by the Irish Supreme Court.

The Prime Minister, David Lloyd George, concluded that this was not the constitution of a British Dominion, as the Irish Free State had been defined under the Treaty, but that of "a Republic with a thin veneer".¹⁰¹ This led to increased tension between London and Dublin which threatened to destabilise the Treaty settlement. Following intensive negotiations between UK signatories and representatives from the Provisional Government, on 2 June 1922 the Irish agreed to redraft the document.

Much of the practical work was carried out by Lord Hewart, a UK signatory to the Treaty and now Lord Chief Justice of England, and Hugh Kennedy, who was to become the first Irish Attorney General and Chief Justice of the Irish Supreme Court. The UK government's priority was making the constitution compliant with the Treaty, although it also offered advice on other aspects which were at the discretion of the Provisional Government.¹⁰²

Final agreement was only reached between the UK and Irish delegations on 15 June 1922, the day before elections to the Provisional Parliament (or Constituent Assembly). Article 1 of the constitution included a declaration that the Irish Free State would have co-equal status with the other members of the British Commonwealth.¹⁰³

The text of the Constitution of the Irish Free State appeared in Irish newspapers as voters went to the polls. Leaks prior to the election meant that public opinion understood "that the Provisional Government had presented

⁹⁹ All three drafts were not made public until the 1970s

¹⁰⁰ Although this was not mentioned in the Treaty, it was assumed on account of the Free State being a Dominion. The role of the JCPC was controversial in Ireland, not least because the former Ulster Unionist leader Lord Carson was a Law Lord

¹⁰¹ CAB 43/1 22/N/148(3) and CAB 43/7 22/N/162, London: The National Archives

¹⁰² These included placing responsibility for dissolution of the Dáil in the hands of the executive rather than the legislature

¹⁰³ This represented the first occasion on which the term "British Commonwealth", as opposed to "British Empire" was used in a Dominion constitution

the British with a draft Constitution that was very different in many respects from the draft that returned from London".¹⁰⁴

At the election, 38.5% of Irish voters supported pro-Treaty candidates and 21.8% anti-Treaty.¹⁰⁵ Polling took place amid a deteriorating security situation in Ireland. [Sir Henry Wilson](#), the security adviser to the Government of Northern Ireland, was assassinated on 22 June, while the Provisional Government commenced a bombardment of the [Four Courts](#) in Dublin (which had been occupied by IRA Irregulars) on 28 June. This led to the [Irish Civil War](#), a conflict between supporters and opponents of the Treaty.

On 12 August 1922 Arthur Griffith died and was succeeded as president of Dáil Éireann by W. T. Cosgrave. On 23 August, [Michael Collins, Chairman of the Provisional Government, was assassinated](#). As a result, the Provisional Parliament elected on 16 June – which became known as the [Third Dáil](#) – did not meet until 9 September. It was boycotted by Republicans, which gave pro-Treaty members an artificially large majority.¹⁰⁶

The Free State constitution was guided through the Dáil by Kevin O'Higgins during the autumn and the [Constitution of the Irish Free State \(Saorstát Éireann\) Act, 1922](#) was passed on 25 October 1922.¹⁰⁷

5.3

Irish Free State (Constitution) Act 1922

The passage of the Irish Free State constitution in Dublin coincided with the collapse of the Conservative-Liberal coalition government in London. At the Carlton Club on 19 October 1922, [Conservative MPs voted to withdraw from the coalition](#), which led to the resignation of David Lloyd George as Prime Minister.

On 21 October Lloyd George issued a press comment which assured W. T. Cosgrave that his resignation would not "compromise the treaty".¹⁰⁸ At the UK general election held on 15 November 1922, the Conservatives led by Andrew Bonar Law won a majority of seats and he was invited to form a government. The 92 MPs representing constituencies in "Southern Ireland" did not contest the election, the Irish Free State (Agreement) Act 1922 having stated that no writ was to be issued "for a constituency in Ireland other than a constituency in Northern Ireland" (of which there were 13).

¹⁰⁴ Thomas Mohr, ["British involvement in the creation of the first Irish constitution"](#), University College Dublin, 2008

¹⁰⁵ Forty per cent voted for non-Treaty parties and candidates. The election result was Provisional Government (58), Republicans (35), Labour (17), Farmers (7), Independents (7) and Unionists (Trinity College) (4)

¹⁰⁶ Pro-Treatyites later became known as [Cumann na nGaedheal](#) ("Society of the Gaels")

¹⁰⁷ By this Act, the Treaty also formed part of Irish law given its incorporation in the constitution

¹⁰⁸ Keith Middlemass, p217. The civil servant Tom Jones urged Lloyd George not to dissolve Parliament until the second ratifying Act had received Royal Assent

Bonar Law had made it clear during the election campaign that he had no intention of delaying final ratification of the Treaty. On 27 November he introduced the Irish Free State (Constitution) Bill in another special parliamentary session.¹⁰⁹ This Bill included the Free State constitution as a Schedule. Section 5 also stated that it “shall be deemed to be the Act of Parliament for the ratification of the said Articles of Agreement as from the passing whereof the month mentioned in Article XI of the said Articles is to run”. This meant the “Ulster Month” would begin as soon as this Act received Royal Assent.

The UK Parliament also considered what became the [Irish Free State \(Consequential Provisions\) Act 1922](#), which provided that the Government of Ireland Act 1920 would cease to apply beyond Northern Ireland. It also replaced the Lord Lieutenant of Ireland with a [Governor of Northern Ireland](#).

Both Acts received Royal Assent on 5 December 1922. The New York Times reported that just before 6pm:

the Irish Free State Constitution bills had passed the final stage in the House of Commons by formal acceptance of the Lords' amendments. It was brought back, beribboned and sealed, by the Clerk of the Commons himself, and handed to the Clerk of the Parliament to receive the Royal assent [...] King George will make a special journey from Sandringham tomorrow to hold a privy council in Buckingham Palace, at which he will sign a proclamation declaring the adoption of the Irish Constitution by the British and Irish Parliaments. The Constitution will come into operation immediately on the issue of the proclamation.¹¹⁰

When Assent was declared with the words “Le Roy le veult” (“The King wills it”), a Labour MP standing at the bar of the House of Lords called out “God save Ireland”.¹¹¹

On 6 December 1922, the Irish Free State officially became “one of the group of countries which form the Commonwealth of British Nations”.¹¹² Its government was no longer provisional and W. T. Cosgrave became “president of the Council of Ministers”, the equivalent of prime minister. [Tim Healy](#), a former Irish Parliamentary Party Member of the House of Commons, was appointed the first Governor-General of the Irish Free State. The last British troops left Ireland, the Irish tricolour was raised and new stamps were issued.

¹⁰⁹ [HC Deb 27 November 1922 \[Commons Chamber\]](#)

¹¹⁰ New York Times, 6 December 1922

¹¹¹ Keith Middlemass, p219

¹¹² Irish Law Times, December 1922. The proclamation of the Free State constitution was provided for under Article 83 of the Irish Free State (Constitution) Act 1922. Although under UK law the Free State was “born” on 6 December 1922, Irish lawyers and scholars have frequently identified other birth dates, usually 24 April 1916 or 21 January 1919

6

Northern Ireland and Article 12

Under Articles 11 and 12 of the Anglo-Irish Treaty, the Parliament of Northern Ireland had one month – dubbed the “Ulster Month” – during which to decide whether Northern Ireland should remain a devolved part of the United Kingdom or come under the jurisdiction of the Irish Free State once that month had passed.

When the Anglo-Irish Treaty had been agreed on 6 December 1921, Ulster Unionists reacted strongly to what they regarded as breaches of pledges given not to alter the geographical boundaries of Northern Ireland as established under the Government of Ireland Act 1920. Sir James Craig, the Prime Minister of Northern Ireland, complained to David Lloyd George that Northern Ireland would “automatically” become part of the Irish Free State, although this appears to have been based on a misunderstanding of Articles 11 and 12. Craig also expressed opposition to the idea of a Boundary Commission that might change the border between Northern Ireland and the Free State.

By 6 December 1922, Ulster Unionist discontent focused on the Boundary Commission which would be triggered if the Parliament of Northern Ireland presented an Address to King George V. The devolved parliament was due to meet on 12 December, but while Arthur Quekett, its parliamentary counsel, was clear that “in law, Northern Ireland would not come in any respect within the Free State until the expiration of the Ulster month”, Sir James Craig brought the meeting forward to 7 December. Great care was then taken that the wording of an Address would be compliant with the Treaty.¹¹³

It took about half an hour for the Commons and the Senate of Northern Ireland to agree an Address. It read:

MOST GRACIOUS SOVEREIGN, We, your Majesty’s most dutiful and loyal subjects, the Senators and Commons of Northern Ireland in Parliament assembled, having learnt of the passing of the Irish Free State Constitution Act, 1922, being the Act of Parliament for the ratification of the Articles of Agreement for a Treaty between Great Britain and Ireland, do, by this Humble Address, pray Your Majesty that the powers of the Parliament and Government of the Irish Free State shall no longer extend to Northern Ireland.

Sir James Craig then personally transported two copies of the Address to London via the night boat from Belfast. At 10.45am on Friday 8 December he

¹¹³ As in many other respects, the Treaty had not specified what form the Address ought to take (see CAB6/76, Belfast: Public Record Office for Northern Ireland)

delivered one copy to Viscount FitzAlan, who remained Lord Lieutenant for Ireland, who passed it on to the Home Secretary, William Bridgeman. It was then transported to Sandringham by train.

The King was shooting so was not presented with the Address until later in the day. The 2nd Earl of Cromer, the Lord Chamberlain (of the Baring bank family), presented it on the Home Secretary's behalf. A courier returned to London the following day, 9 December, with the King's Reply. Notice of both the Address and the Reply were ordered to be included in the London Gazette of 12 December 1922 "without fail".¹¹⁴

On 13 December, Sir James Craig informed the (Northern Ireland) House of Commons that the monarch had responded as follows:

I have received the Address presented to me by both Houses of the Parliament of Northern Ireland in pursuance of Article 12 of the Articles of Agreement set forth in the Schedule to the Irish Free State (Agreement) Act, 1922, and of Section 5 of the Irish Free State Constitution Act, 1922; and I have caused my Ministers and the Irish Free State Government to be so informed.¹¹⁵

This meant that the Irish Free State, constituted as a 26-county entity on 6 December 1922, would not encompass all 32 counties as of 6 January 1923. The Parliament of Northern Ireland had "opted" or "contracted out" of its future inclusion in an all-Ireland parliament.

Some Irish historians have argued that Northern Ireland in fact "seceded" from an initially 32-county Irish Free State.¹¹⁶ Writing in May 2021, Tánaiste Leo Varadkar claimed that the Treaty "in fact, reunited Ireland for a day until the Northern Ireland parliament voted to opt out".¹¹⁷

The administrative partition created by the Government of Ireland Act 1920 was thus confirmed and reinforced by the Treaty, although the boundary was now that between two distinct parts of the British Empire or Commonwealth. As the historian John McColgan has observed, "the Treaty inadvertently achieved for the Northern Unionists the more complete administrative partition they had hoped for, but could not find in the Government of Ireland Act 1920".¹¹⁸

¹¹⁴ For the logistics of the Address and its presentation to the King, see HO45/12359, London: The National Archives

¹¹⁵ The Belfast Gazette, 15 December 1922

¹¹⁶ See, for example, Nicholas Mansergh, *The Unresolved Question: The Anglo-Irish Settlement and Its Undoing 1912-72*, New Haven: Yale University Press, 1991, p220

¹¹⁷ ["Leo Varadkar: The 1921 Treaty shaped Irish politics for a century"](#), Irish Times, 25 May 2021

¹¹⁸ John McColgan, *British Policy and the Irish Administration 1920-22*, London: HarperCollins, 1983, p136

6.1

The Boundary Commission

The quid pro quo of the Parliament of Northern Ireland's Address had been set out in Article 12 of the Treaty. This stated that a Commission:

consisting of three Persons, one to be appointed by the Government of the Irish Free State, one to be appointed by the Government of Northern Ireland and one who shall be Chairman to be appointed by the British Government shall determine in accordance with the wishes of the inhabitants, so far as may be compatible with economic and geographic conditions, the boundaries between Northern Ireland and the rest of Ireland [...]

The qualifying phrase “so far as may be compatible with economic and geographic conditions” had not appeared in earlier drafts of the Treaty and proved important in terms of how the Boundary Commission approached its remit.

The Treaty had not specified a timescale for the Commission and its constitution was delayed by a variety of factors. The Irish Civil War ended in May 1923, and on 19 July the Governor-General of the Irish Free State informed the UK Colonial Secretary (who had formal responsibility for UK-Free State relations) that Dublin had nominated its commissioner.¹¹⁹

On 27 August 1923 the Free State held its first general election. Cumann na nGaedheal, the successor to the pro-Treaty wing of Sinn Féin, won and W. T. Cosgrave was appointed president of the Free State's executive council. What was known as the [Fourth Dáil](#) gathered at Leinster House in Dublin on 19 September.¹²⁰ That same month, the Irish Free State joined the [League of Nations](#).

The Government of Northern Ireland refused to appoint a commissioner, arguing that it had not been party to the Treaty and therefore did not recognise Article 12. The UK government suggested tripartite talks in London, to which the Free State and Northern Ireland agreed. This was delayed by an Imperial Conference and another UK general election.¹²¹ Elections to the Parliament of Northern Ireland in November 1923 were, meanwhile, dominated by the border issue.

Talks finally took place in February 1924 at Downing Street, by which point a minority Labour government had been formed in the UK. Its policy was consistent with that of the previous Conservative administration. The illness of both Sir James Craig and W. T. Cosgrave delayed further discussion. A meeting on 24 April failed to reach an agreement. On 26 April the Free State

¹¹⁹ Cmnd 2155, Irish Free State and Northern Ireland, June 1924

¹²⁰ Many Republican Party TDs were still imprisoned during and after the election and had committed to not taking their seats even if elected

¹²¹ Cmnd 2155

demanded the constitution of the Boundary Commission, prompting the UK government to announce its formation, but on 10 May the Government of Northern Ireland still “respectfully” declined to nominate its representative.¹²²

On 21 May 1924, the UK Cabinet made a special reference to the [Judicial Committee of the Privy Council](#) (JCPC) under Section 4 of the [Judicial Committee Act 1833](#). It asked whether the Boundary Commission could be constituted without a nomination from the Government of Northern Ireland; if it could not, then it asked if the UK government could instruct the Governor of Northern Ireland to do so; if the answer to that was also “no”, then it asked if the Crown (on the advice of UK ministers) could do so. If the answer to that was in the negative, then the final question was “whether there is any constitutional method of bringing the Commission into existence so long as the Ministers of Northern Ireland maintain their refusal”.¹²³

Tim Healy, the Governor-General of the Irish Free State, viewed the reference to the JCPC as “a device to cause further delay” and “if possible, to shelve the whole matter” and said his government would not take part in proceedings. On 5 June the UK Prime Minister, [Ramsay MacDonald](#), named Mr Justice [Richard Feetham](#) of the South Africa Supreme Court as chairman of the Boundary Commission.¹²⁴ MacDonald wrote to W. T. Cosgrave the following day:

The Treaty is but the dry bones of a settlement. In the last two years you have clothed it with flesh, but we have yet to breathe into its frame the living spirit of reconciliation. The feeling grows upon me that this we shall only do by remembering that there are interests wider than those which preoccupy our minds in these two Islands. I want to enlist you, your Government and all Ireland, including the North, in the cause of bringing back peace to the world.¹²⁵

In July 1924 the JCPC answered “no” to all of the UK government’s questions regarding the Boundary Commission, concluding that for it to appoint a representative on behalf of Northern Ireland would be beyond its legislative competence under the 1921 Treaty and associated legislation.¹²⁶

¹²² Cmnd 2155

¹²³ Cmnd 2155

¹²⁴ Feetham had been born in Wales

¹²⁵ Cmnd 2166, Irish Free State and Northern Ireland, June 1924

¹²⁶ See Sir Arthur Quekett, 1928, pp61-62. The chairman of the putative Boundary Commission also asked the JCPC to rule on whether its “Award” had to be made unanimously or simply by a majority. The JCPC said the latter. Only two of the five judges deciding this case were British (Lords Dunedin and Blanesburgh). The others came from India, Canada and Australia

The UK government had no option but to amend the Anglo-Irish Treaty, which it did so in full consultation with the Free State government.¹²⁷ As in 1922, therefore, legislation was passed by both parliaments.¹²⁸

The Irish Free State (Confirmation of Agreement) Bill received its [second reading in the UK House of Commons on 1 October 1924](#). Conservative MPs proposed amendments but did not oppose it. Ulster Unionist MPs at Westminster pushed for its defeat, but on 9 October it received Royal Assent. Equipped with the necessary powers, the UK government appointed [Joseph R. Fisher](#), a Belfast barrister and newspaper editor, as Northern Ireland's representative on 24 October 1924.

The Boundary Commission was fully constituted on 29 October 1924 (the same day Labour lost the UK general election) and first met on 6 November. It convened in secret throughout the following year, during which the Ulster Unionist Party fought another election in Northern Ireland under the banner “Not an inch”. Mr Justice Feetham, meanwhile, interpreted Article 12 to mean that “economic and geographic conditions” were more important than the “wishes of the inhabitants” when it came to determining a new boundary.¹²⁹

By October 1925 the Commission had reached its conclusions, which were automatically to become the new Irish border without enabling legislation from London or Dublin. The UK Government, however, feared serious violence or outright war if the Commission’s “Award” proved unacceptable in either part of Ireland.¹³⁰

The Commission recommended relatively minor territorial transfers from Northern Ireland to the Free State (and vice versa), what Ivan Gibbons called “a tidied-up version of what had originally been demarcated in the Government of Ireland Act five years earlier”.¹³¹ These were leaked to the conservative Morning Post newspaper and published on 7 November 1924. The Free State was to gain more territory than it would lose, but the story caused a furore in the Free State, whose understanding was that any transfers would only go in one direction. Particularly alarming for Dublin was the proposed transfer of parts of eastern Donegal to Northern Ireland.

Amid the resulting controversy, the three governments – all of whom feared the electoral consequences of implementing the Award – agreed to suppress the Commission’s report and confirm the existing border.¹³² This, as the

¹²⁷ The UK government was anxious to avoid the charge that it might unilaterally amend the Treaty (Keith Middlemass, p234)

¹²⁸ In July 1924 the Irish Free State registered the Treaty as an international agreement with the League of Nations, against the wishes of the UK government (Ronan Fanning, p345)

¹²⁹ For a full account of the boundary, see Commons Library Briefing Paper CBP-9105, [The Northern Ireland Border](#), 20 May 2021

¹³⁰ Keith Middlemass, p232

¹³¹ Ivan Gibbons, p114

¹³² See Keith Middlemass, pp238-44 for a full account of the tripartite negotiations. The Boundary Commission’s report was not published until 1969 (see Report of the Irish Boundary Commission, Dublin: Irish University Press, 1969). 20 copies were deposited at the UK Cabinet Office, one of which was signed by Feetham and Fisher, all the others were destroyed (Keith Middlemass, p246)

historian Ivan Gibbons has written, “marked the Irish Free State’s final acceptance of the reality of partition”.¹³³

Confirmation of the boundary formed part of a wider agreement which included a resolution of outstanding financial issues between Dublin and London. The Irish Free State was absolved of its responsibility under Article 5 of the Treaty to pay the UK Exchequer £10m a year towards the UK national debt (with the exception of land annuities). In return, the Free State was to pay compensation for property damaged during the War of Independence and Civil War.¹³⁴

All putative functions of the cross-border Council of Ireland were to be transferred to the Government of Northern Ireland. Although this had been conceived as a means by which Ireland might reunify (under the Government of Ireland Act 1920), the Free State had pushed for it to be wound up during the negotiations over the Boundary Commission report.¹³⁵

Stanley Baldwin, the Prime Minister, announced the agreement in the House of Commons on 3 December 1925.¹³⁶ This further amendment of the Treaty required legislation in the UK and Free State parliaments. In the UK, the Ireland (Confirmation of Agreement) Act 1925 revoked Article 12 of the Treaty and rendered nugatory Articles 13, 14 and 15, all of which related to Northern Ireland and its boundary.¹³⁷

A Schedule to the 1925 Act referred to the “improved relations” that now existed between the three governments and the desirability of avoiding “any causes of friction which might mar or retard the further growth of friendly relations between the said governments and peoples”.¹³⁸ Baldwin wrote to W. T. Cosgrave and Sir James Craig in identical terms on 17 December 1925:

I confidently believe that the hopes which inspired the authors of that Agreement will be realised and that it will be found to mark a new stage in the growth of neighbourly feelings throughout Ireland.¹³⁹

The Royal and Parliamentary Titles Act 1927 later changed the name of the UK Parliament to “Parliament of the United Kingdom of Great Britain and Northern Ireland” and enabled King George V to alter his titles by proclamation to take account of the constitution of the Irish Free State in December 1922, which he did on 13 May 1927.¹⁴⁰

¹³³ Ivan Gibbons, p119

¹³⁴ This gave effect to the recommendations of the Compensation (Ireland) Commission formed in 1922. Several IRA prisoners in Northern Ireland were also released under the agreement

¹³⁵ The Council of Ireland ceased to have a statutory existence on 1 April 1926. The “Imperial Secretary” to the Governor of Northern Ireland, a position linked to the Council of Ireland, was also abolished

¹³⁶ HC Deb 3 December 1925 [Prime Minister’s Announcement]

¹³⁷ For a full discussion, see Brigid Hadfield, p75. The Free State passed the corresponding Treaty (Confirmation of Amending Agreement) Act, 1925

¹³⁸ Brigid Hadfield, pp38-39

¹³⁹ Keith Middlemass, p246

¹⁴⁰ London Gazette, 3 May 1927. The King’s new title dropped the term “United Kingdom”

7

Status of the Treaty

During the 1920s and early 1930s there were differing legal views as to the Anglo-Irish Treaty's status in the UK and the Irish Free State.

The constitutional academic F. H. Newark regarded it as “an odd document, and to constitutional lawyers a rather irregular document”, in that treaties were usually “entered into between sovereign States and the ‘Republic of Ireland’ [in 1921] was not a sovereign State”.¹⁴¹

Although the term “Treaty” was widely used in the UK, formally the 1921 document was “Articles of Agreement for a Treaty”. During the Treaty debates in the UK House of Commons in December 1921, the Conservative MP Sir Frederick Banbury had questioned the use of the word “Treaty”:

We can make treaties with Germany and France, but we cannot make a treaty with Yorkshire, and how can we make a treaty with Ireland? The Act of Union has not been repealed. Ireland is still a part of this country, and how can we make a treaty except with a foreign country? Why has the word “treaty” been used? It is because the Sinn Feiners refused to have anything to do with it unless words were put in which involved the recognition of an independent nation.¹⁴²

In the Free State, however, “it was always referred to as the Treaty, in order to stress the conception of Britain and Ireland being two foreign powers in relation to one another”.¹⁴³

This fed into differing interpretations of the legal basis enjoyed by the constitution of the Irish Free State. In terms of UK law, this was the Irish Free State (Constitution) Act 1922, whereas under Irish law it was considered to be the Constitution of the Irish Free State (Saorstát Éireann) Act 1922.

While Irish lawyers tended to view the Free State as a “successor state” to the United Kingdom rather than a “Dominion” like Canada or Australia, the UK saw it as inhabiting a dual status, both a Dominion under the 1921 Treaty and a successor state to the UK, albeit one subject to limitations on its legislative autonomy which did not apply to the Westminster Parliament.

¹⁴¹ F. H. Newark, “The Law and the Constitution” in T. Wilson (ed), *Ulster Under Home Rule: A Study of the Political and Economic Problems of Northern Ireland*, London: Oxford University Press, 1955, p24

¹⁴² [HC Deb 16 December 1921 \[Commons Chamber\]](#)

¹⁴³ Hugh Shearman, *Anglo-Irish Relations*, London: Faber and Faber, 1948, pp193-94. See Henry Harrison, pp131-70, for a full discussion of UK terminology

A “repugnancy clause”¹⁴⁴ in the UK Irish Free State (Constitution) Act 1922 stated that any law made under the Free State constitution that was inconsistent with the provisions of the 1921 Treaty would be rendered void and inoperative. The [Colonial Laws Validity Act 1865](#) also prevented amendment of the repugnancy clause, constituting what one legal academic has called a “double lock”.¹⁴⁵

The Irish legal view was that as a successor state to the UK, the Colonial Laws Validity Act 1865 applied no more to the Free State than it did to the UK. This disagreement also left open the question of whether the Free State could amend “Imperial” statutes passed prior to 6 December 1922. A provision of the Irish Free State (Constitution) Act 1922 stating that it could not¹⁴⁶ was absent from the parallel statute passed by the Provisional Parliament in Dublin. Thus Irish legal experts argued that the Oireachtas had complete discretion in this regard.¹⁴⁷

7.1

Statute of Westminster

The Anglo-Irish Treaty prompted reform of the British Commonwealth/Empire, with the Irish Free State joining Canada and South Africa in pressing for greater autonomy from Westminster during regular gatherings of the [Imperial Conference](#) during the 1920s and early ‘30s.¹⁴⁸

At the 1926 Imperial Conference the “Balfour Declaration” made clear the legislative autonomy of the Dominions, something that was more extensively discussed at the 1929 Conference. At that gathering, the UK government attempted to maintain the supremacy of Imperial (Westminster) legislation across the Empire, but this proved unacceptable to Canada and South Africa as well as the Irish Free State.¹⁴⁹

The report of the 1929 Imperial Conference therefore accepted that the overriding effect of Imperial statutes over Dominion law, as reflected in the Colonial Laws Validity Act 1865, should come to an end. When the UK Parliament debated the subsequent Statute of Westminster Bill at the end of 1931, “die-hard” Conservatives tabled amendments to exclude the Free State

¹⁴⁴ The term “repugnancy clause” was introduced by Leo Kohn (see Leo Kohn, *The Constitution of the Irish Free State*, London: George Allen & Unwin, 1932, p98)

¹⁴⁵ Thomas Mohr, “British Imperial Statutes and Irish Law: Imperial Statutes Passed Before the Creation of the Irish Free State”, *Journal of Legal History* 31:3, 2010, pp299-321

¹⁴⁶ See Section 3

¹⁴⁷ Thomas Mohr, “British Imperial Statutes and Irish Law”

¹⁴⁸ See D. W. Harkness, *The Restless Dominion: The Irish Free State and the British Commonwealth of Nations*, 1921-31, Dublin: Gill & Macmillan, 1969. During the Treaty negotiations, Michael Collins had made much of Andrew Bonar Law’s acknowledgement that Dominions could “vote themselves out of the British Empire” (Keith Middlemass, p122)

¹⁴⁹ Only New Zealand supported the UK

from its provisions. Winston Churchill (a Treaty signatory) in particular feared that the Statute would allow the Free State to repudiate the 1921 Treaty.¹⁵⁰

W. T. Cosgrave, president of the executive council of the Irish Free State, attempted to reassure opponents of the Statute by stating that the Treaty was “an agreement which can be altered only by consent”. Ramsay MacDonald, once again UK Prime Minister, quoted Cosgrave’s letter in the House of Commons. The Dominions Secretary, James Thomas, argued that the Free State would be obliged to maintain the Treaty settlement on moral grounds following enactment of the Statute of Westminster, insisting that such considerations occupied “a higher plane than an obligation imposed by law”. Stanley Baldwin, the Lord President of the Council, also claimed he had received legal advice stating that “the binding character of the Articles of Agreement will not be altered by one jot or tittle by the passing of the Statute”.¹⁵¹

As the Irish constitutional academic Henry Harrison observed:

In bald terms [the UK] would appear first to have denied the authority of the Treaty as a treaty and thereafter to have set up the authority of the Treaty in order to escape from the consequences of its own considered act in agreeing to and enacting the Statute of Westminster.¹⁵²

An amendment in the House of Lords also attempted to exclude the Free State from the Statute, but this was rejected. Section 2(1) of the [Statute of Westminster Act 1931](#) thus made clear that:

No law and no provision of any law made after the commencement of this Act by the Parliament of a Dominion shall be void or inoperative on the ground that it is repugnant to the law of England, or to the provisions of any existing or future Act of Parliament of the United Kingdom, or to any order, rule or regulation made under any such Act and the powers of the Parliament of a Dominion shall include the power to repeal or amend any such Act order, rule or regulation in so far as the same is part of the law of the Dominion.

The removal of limitations contained in the Colonial Laws Validity Act 1865 meant that provisions of Irish law could no longer be challenged on the grounds of incompatibility with an Imperial statute or the terms of the Anglo-Irish Treaty as enshrined in the UK Irish Free State (Constitution) Act 1922.

In 1931 the Irish Free State government gave formal consent for the enactment of the Statute of Westminster while simultaneously denying that the measure

¹⁵⁰ Thomas Mohr, “The Statute of Westminster, 1931: An Irish Perspective”, *Law and History Review* 31:4, November 2013, pp749-91

¹⁵¹ Quoted in Thomas Mohr, “The Statute of Westminster”

¹⁵² Henry Harrison, p46

would have any legal impact in Ireland.¹⁵³ W. T. Cosgrave said the Statute – which represented the last occasion on which the UK Parliament purported to legislate for the Free State – was “the end of an epoch” and marked a “milestone on the onward march of this nation”.¹⁵⁴

7.2

De Valera and the Treaty

At the Irish Free State election held on 16 February 1932, W. T. Cosgrave’s Cumann na nGaedheal party lost to Éamon de Valera’s [Fianna Fáil](#), the successor to the anti-Treaty element of Sinn Féin.¹⁵⁵

While W. T. Cosgrave’s government had largely adhered to the Anglo-Irish Treaty while adopting a policy of constructive engagement with the UK and the wider British Empire, Fianna Fáil was committed to an extensive programme of constitutional reform.

Land annuities

In July 1932 the Irish Free State defaulted on its half-yearly payment to the UK Exchequer in respect of land annuities.¹⁵⁶ These were included as part of its contribution to servicing the UK national debt under Article 5 of the Treaty.¹⁵⁷

Arbitration failed when the UK government stipulated that all tribunal personnel had to be UK subjects.¹⁵⁸ A conference in the autumn of 1932 also broke down when de Valera demanded reparations on the basis of historical over-taxation and the economic damage to Ireland caused by the UK’s abandonment of the gold standard.

An economic or “trade war” ensued. The UK Treasury imposed special tariffs on Free State food products entering Great Britain, particularly live cattle, in an attempt to recoup the withheld land annuities. The Free State responded with duties on British imports to Ireland. The Coal-Cattle Pact of January 1935 eased the restrictions to some degree, and was extended by a year in February 1936.¹⁵⁹

¹⁵³ Thomas Mohr, “The Statute of Westminster”. Neither New Zealand nor Australia enacted the Statute in 1931

¹⁵⁴ Thomas Mohr, “The Statute of Westminster”.

¹⁵⁵ Cumann na nGaedheal merged with two other parties in September 1933 to form [Fine Gael](#)

¹⁵⁶ These were collected from tenants by the Free State government and paid into the UK land purchase fund

¹⁵⁷ The 1925 boundary agreement in respect of Article 5 had excluded land annuities

¹⁵⁸ See Cmnd 4056, [Papers relating to the Parliamentary Oath of Allegiance in the Irish Free State and the Land Purchase Annuities](#), 11 April 1932

¹⁵⁹ Henry Harrison, p38

Oath of allegiance

On 3 May 1933 the [Constitution \(Removal of Oath\) Act, 1933](#) became law in the Free State, which removed the parliamentary oath set out in Article 4 of the Treaty.

The UK government made clear its view that this was “in direct conflict with the obligations undertaken by the Irish Free State under the Treaty of 1921”. Despite the passage of the Statute of Westminster, it maintained that:

The Treaty is the fundamental basis of the position of the Irish Free State, and in order to achieve their object the Irish Free State Government have been compelled to include in their legislation clauses purporting not only to abolish the requirement of the Parliamentary Oath but also to repeal those provisions of the Constituent Act and the Constitution of the Irish Free State which set out that the Treaty has the force of law and over-riding authority in relation to the Constitution.

The UK government said it had been advised that this did not amount to an “act of secession” (from the British Empire) and “that a failure to take the Oath is not in itself a repudiation of allegiance”.¹⁶⁰

Governor-General

On 9 August 1933, de Valera introduced three further amendments to the text of the 1922 Free State constitution. Two of these reduced the power of the Governor-General of the Irish Free State in relation to vetoing legislation and the appropriation of money, causing further consternation in London.

These became the [Constitution \(Amendment No. 20\) Act, 1933](#) and the [Constitution \(Amendment No. 21\) Act, 1933](#). De Valera had nominated [Domhnall Ua Buachalla](#) as the last Governor-General of the Irish Free State in 1932 but he played almost no public role.

Judicial Committee

De Valera’s third amendment was the most controversial: The Constitution (Amendment No.22) Bill intended to abolish the right to appeal from the Irish Free State to the Judicial Committee of the Privy Council (JCPC).¹⁶¹

The Free State government had blocked appeals to the JCPC by various means since 1926, but an effort to secure the UK’s agreement to abolition of the appeal had been defeated at the 1930 Imperial Conference.

¹⁶⁰ [HL Deb 11 May 1933 \[Lords Chamber\]](#)

¹⁶¹ The Cosgrave administration had drafted similar legislation but had not introduced it prior to the 1932 election

As with de Valera's other constitutional changes, the UK government maintained that abolition of appeal to the JCPC breached the 1921 Treaty.

7.3

Moore v Attorney General

The legality of this constitutional change was put to the test in 1935.

A fisheries company claimed entitlements in the tidal portion of the River Erne in the County of Donegal. Its legal action against the Attorney General for the Irish Free State (and 42 others) for wrongfully entering these waters was defeated in the Irish courts and so the company sought an appeal to the JCPC. This, however, had been abolished in 1933.

The Erne Fishery Company nevertheless proceeded, arguing that the abolition of the appeal could not be considered valid under the Statute of Westminster as the Oireachtas had never purported to be acting under UK statute but under the terms of Irish law alone.¹⁶²

Judicial Committee proceedings began in April 1935, but the Free State refused to take part. Appearing for the UK government, Sir Thomas Inskip, the Attorney General for England and Wales, conceded that the Statute of Westminster appeared to give the Free State parliament the authority to pass laws contrary to the requirements of the Treaty, and this it had done in spite of the fact that the Oireachtas had never actually invoked the authority of that Statute. However, he argued that the signing of the Treaty had created a contractual relationship between the UK and the Irish Free State which had not been affected in any way by the Statute of Westminster.¹⁶³

The JCPC handed down its judgement in the case of *Moore v Attorney General* on 6 June 1935. The Lord Chancellor, Viscount Sankey, spoke for the entire bench in rejecting that the Free State constitution was the sole product of Irish law. By not expressing any opinion on Inskip's assertion that the Free State was bound by certain moral obligations, however, the JCPC appeared to admit that this argument did not have any legal basis.

Sankey stated that it had to be assumed that the Oireachtas had abolished the right of appeal in the only way it could from a UK legal perspective:

The simplest way of stating the situation is to say that the Statute of Westminster gave to the Irish Free State a power under which they

¹⁶² It was further argued that as the Free State constitution had been enacted by a "Constituent Assembly" (the Third Dáil) rather than the Free State parliament, then there existed no authority capable of amending that constitution

¹⁶³ Thomas Mohr, "[Law Without Loyalty – The Abolition of the Irish Appeal to the Privy Council](#)", Irish Jurist 37, 2002, pp187-226. Inskip's argument was consistent with the UK government's position in 1931

could abrogate the Treaty, and that, as a matter of law, they have availed themselves of that power.¹⁶⁴

As the Irish legal academic Thomas Mohr has observed, by this judgement the Judicial Committee of the Privy Council “had conclusively decided to uphold the legitimacy of its own abolition” (in the Free State). As a result, 6 June 1935 could be “considered the day in which Ireland finally won undisputed judicial sovereignty”.¹⁶⁵

The UK House of Commons debated the JCPC judgement on 10 July 1935. MPs such as James Milner and Sir Stafford Cripps said it was no longer any use for the UK government to continue arguing that the Irish Free State had “moral obligations” to uphold the Anglo-Irish Treaty.¹⁶⁶

Speaking in the House of Lords, Lord Carson stated that “every pledge of law and order has been destroyed [...] and now the last remnant is to be taken away”.¹⁶⁷

7.4

Abdication and the 1937 Constitution

In late 1936, the Irish Free State’s Senate (Seanad) was abolished after it delayed some of de Valera’s constitutional changes.

When [King Edward VIII](#) abdicated in December 1936, de Valera responded by legislating to transfer responsibility for making consular appointments and agreeing treaties from the Crown to the Free State’s executive council.

As a Dominion, the Free State parliament was also required to legislate in recognition of the abdication, which it did two days after the UK Parliament. As the historian Norman Davies has observed, this meant “that for one whole day – 11 December 1936 – the duke of Windsor retained his status as king in Ireland (if not as ‘king of Ireland’) without being the United Kingdom’s sovereign”.¹⁶⁸ The [Executive Authority \(External Relations\) Act 1936](#) became law on 12 December 1936.¹⁶⁹

In 1937, de Valera replaced the remaining provisions of the Free State constitution with a [new constitution](#) which completely ignored the 1921 Treaty. Articles 2 and 3 of that read as follows:

¹⁶⁴ [1935] IR 472 at 486-87 and [1935] Appeal Cases 484 at 499. Viscount Sankey ceased to be Lord Chancellor the day after this judgement

¹⁶⁵ Thomas Mohr, “Law Without Loyalty”

¹⁶⁶ [HC Deb 10 July 1935 \[Irish Free State\]](#)

¹⁶⁷ Thomas Mohr, “Law Without Loyalty”

¹⁶⁸ Norman Davies, *Vanished Kingdoms: The History of Half-Forgotten Europe*, London: Allen Lane, 2011, p662

¹⁶⁹ This minimised, rather than completely removed, the authority of the Crown

Article 2: The national territory consists of the whole island of Ireland, its islands and the territorial seas.

Article 3: Pending the re-integration of the national territory, and without prejudice to the right of the Parliament and Government established by this Constitution to exercise jurisdiction over the whole of that territory, the laws enacted by that Parliament shall have the like area and extent of application as the laws of Saorstát Éireann and the like extra-territorial effect.¹⁷⁰

This new constitution asserted what had earlier been called the “essential unity” of Ireland while also reviving the idea of “external association” between what was now to be called “Éire” and the British Commonwealth. When the constitution – which was endorsed by a plebiscite on 1 July 1937 – came into effect on 29 December 1937, the UK government said it was:

prepared to treat the new constitution as not effecting a fundamental alteration in the position of the Irish Free State in future to be described under the new constitution as “Eire” [...]¹⁷¹

Legally, Éire remained a Dominion and its citizens retained their “British subject” status under Imperial law.¹⁷² Laura Cahillane and Paul Murray have speculated that de Valera chose not to declare a republic – as was possible under the Statute of Westminster – because it would have meant “leaving the Commonwealth and it suited Ireland, for economic reasons, to remain within this entity”.¹⁷³

In response to a question in the Dáil regarding the status of the Irish state in 1945, de Valera argued that Ireland was a republic in everything but name as a result of the Statute of Westminster and the 1937 constitution.¹⁷⁴

7.5 Treaty Ports

Despite the new Éire constitution, the UK government retained control of three “Treaty Ports” under Article 7 of the Treaty, at Queenstown/Cobh (near Cork), Berehaven (in south-west Ireland) and at Lough Swilly (in County Donegal).

When, during 1938, Éire and the UK negotiated an end to the long-running Economic War, the Treaty Ports formed part of the settlement.¹⁷⁵ [Neville](#)

¹⁷⁰ Articles 2 and 3 of the 1937 constitution were [amended](#) following the 1998 [Belfast/Good Friday Agreement](#) in order to remove the territorial claim to Northern Ireland

¹⁷¹ Hugh Shearman, p227

¹⁷² [British Nationality Act 1948](#)

¹⁷³ Laura Cahillane and Paul Murray, “The Treaty: An Historical and Legal Interpretation” in Liam Weeks and Mícheál Ó Fathartaigh (eds), *The Treaty: Debating and Establishing the Irish State*, Dublin: Irish Academic Press, 2018, Kindle location 5433

¹⁷⁴ This was known as de Valera’s “Dictionary Republic” speech

¹⁷⁵ On this occasion, de Valera led the Irish delegation

Chamberlain, the UK Prime Minister, had come to the view that it was worth surrendering the ports “to obtain the essential goodwill of the Irish Free State”.¹⁷⁶

Three agreements between the Irish and UK governments were signed in London on 25 April 1938:

- The first rescinded Articles 6 and 7 of the Anglo-Irish Treaty and thus transferred the Treaty Ports to Éire control;
- The second resolved the land annuity dispute with a one-off payment by Éire to the UK of £10 million;
- The third ended the “Economic War” between the two countries.

These agreements were given legal effect by the Eire (Confirmation of Agreements) Act 1938.¹⁷⁷ This also gave partial recognition in UK law to the 1937 constitution, including reference to “Eire” (without an accent) but not “Ireland”, which avoided causing controversy in Northern Ireland.

Winston Churchill protested when the House of Commons debated the Bill:

I could not reconcile it with my duty to the House, as a signatory to the Treaty, the broken Treaty, if I kept silent upon this Bill [...] When I read this Agreement in the newspapers a week ago I was filled with surprise. On the face of it, it seemed to have given everything away and received nothing in return, except the payment of £10,000,000.¹⁷⁸

Éire declared its neutrality during the Second World War, which created resentment in the UK given its inability to take advantage of the ports for defence purposes.¹⁷⁹

7.6 Ireland Act 1949

By the end of the 1930s, little remained of the Anglo-Irish Treaty beyond Éire’s membership of the British Commonwealth and Northern Ireland’s constitutional status as a devolved part of the United Kingdom.

During a visit to Canada in 1948, de Valera’s successor as Taoiseach, ¹⁸⁰ John A. Costello, revealed that he intended to take the country out of the British Commonwealth, something made possible by the 1931 Statute of Westminster.

¹⁷⁶ David McCullagh, *De Valera Rule 1932–75*, Dublin: Gill, 2018, pp140-42

¹⁷⁷ Cobh (Queenstown) was handed over on 11 July 1938, Berehaven on 29 September and Lough Swilly on 3 October

¹⁷⁸ HC Deb 5 May 1938 [Eire (Confirmation Of Agreements) Bill]

¹⁷⁹ Éire did acquiesce, however, in UK military use of the waters and airspace of the contested Lough Foyle estuary and airspace in Donegal

¹⁸⁰ This Gaelic word for “chief” or “leader” had been adopted in the 1937 Éire constitution

Section 1 of Éire's [Republic of Ireland Act 1948](#) subsequently repealed the Executive Authority (External Relations) Act 1936 and, in so doing, removed the last remaining functions of the British Crown in relation to Ireland.¹⁸¹ It also declared that "the description of the State shall be the Republic of Ireland". The 1948 Act came into force on 18 April 1949.

[Sir Basil Brooke](#), Prime Minister of Northern Ireland since 1943, was concerned that the necessary Westminster legislation would provide an opportunity for anti-partitionists to "seek to merge Northern Ireland with Eire rather than grant greater independence to Northern Ireland".¹⁸² To guard against this possibility, Sir Basil pressed for a clear statement of Northern Ireland's constitutional status in the Ireland Bill.¹⁸³

The Ireland Bill was read for a second time on 11 May 1949. Clause 1(1b) confirmed Northern Ireland's status as part of the UK. Attlee told the House of Commons that he was "surprised" to have received protests from Dublin:

It is the action of the Eire Government itself in deciding to leave the Commonwealth that has made it quite inevitable that a declaration as to the position of that part of Ireland which is continuing in the Commonwealth should be made.

Attlee argued that the "natural corollary" of Éire ceasing to be part of the Commonwealth was to "declare that Northern Ireland remains part of the Commonwealth and of the United Kingdom, and will not cease to be so without the consent of the Parliament of Northern Ireland". He continued:

We recognise the authority of the Parliament of Eire, now the Republic of Ireland, to act on behalf of the people of Eire in carrying out their decision to leave the Commonwealth and we do not look behind that. We recognise equally the right of the Parliament of Northern Ireland to decide on behalf of the people of Northern Ireland to stay in or leave the United Kingdom and Commonwealth.¹⁸⁴

The [Ireland Act 1949](#) received Royal Assent on 2 June 1949.

While an Irish republic had previously been declared in 1916 and 1919, this was the first time it was recognised internationally.¹⁸⁵

¹⁸¹ These were mainly confined to diplomatic credentials and international agreements. Only with the Statute Law Revision (Pre-Union Irish Statutes) Act 1962 was the Crown fully removed from the Irish statute book, in that it repealed the [Crown of Ireland Act 1542](#).

¹⁸² Henry Patterson, *Ireland Since 1939: The Persistence of Conflict*, London: Penguin, 2007, p117. The Anti-Partition League had been formed in 1945 and contested Labour-held constituencies at the 1950 UK general election.

¹⁸³ For a detailed account of this episode, see Brian Barton, "Relations between Westminster and Stormont during the Attlee Premiership", *Irish Political Studies* 7:1, 1992, pp1-20

¹⁸⁴ [HC Debts 11 May 1949 Vol 464 cc1854-57](#)

¹⁸⁵ The Irish republic declared in 1919 had been recognised by revolutionary Russia

8

The Anglo-Irish Treaty in 2021

During a debate on the [Protocol on Ireland/Northern Ireland](#) in the House of Lords on 13 September 2021, Lord Hannan drew an analogy between the Protocol and the Anglo-Irish Treaty:

It is true that it [the Protocol] was signed, as what we might call an unequal treaty. History is littered with examples of treaties that ceased to be valid and were then abrogated or annulled. An apt example, given both the subject matter and this being its centenary year, is the Anglo-Irish treaty of 1921. It was repudiated in stages by successive Irish Governments, first breaking their residual constitutional links with the UK, then declaring a republic and leaving the Commonwealth.¹⁸⁶

Previously, analogies had been drawn between the Treaty and Scottish independence. In 2006, the Earl of Mar and Kellie suggested that Faslane and Coulport in Scotland could become “a treaty port” for 20 years in the event of independence, enabling the Royal Navy to construct a new nuclear base in England.¹⁸⁷ In January 2014, Lord Kilclooney also asked the UK government if it would apply the Irish precedent to UK national debt. Lord Deighton replied that:

The Anglo-Irish Treaty, signed on 6 December 1921, confirmed that The Irish Free State would assume liability for a “fair and equitable” proportion of UK debt. In the event of Scottish independence Scotland would become responsible for a fair and proportionate share of the UK’s current liabilities.¹⁸⁸

A 2018 academic publication on the Treaty observed that it is “not celebrated in Ireland”:

[T]he concessions made in the Anglo-Irish Treaty on Irish republicanism have eclipsed the broader significance of the Treaty. Moreover, they have eclipsed the achievement of substantive independence for Ireland that the Anglo-Irish Treaty brought about. A century later this remains the case.¹⁸⁹

¹⁸⁶ [HL Deb 13 September 2021 \[Protocol on Ireland/Northern Ireland \(EUC Report\)\]](#)

¹⁸⁷ [HC Deb 14 July 2006 c983](#) In September 2021, the [Financial Times reported](#) that the UK Ministry of Defence was making plans to negotiate a new British Overseas Territory within an independent Scottish state which would contain the Faslane and Coulport bases

¹⁸⁸ [HL Deb Written Answers 21 January 2014 cWA100](#)

¹⁸⁹ Liam Weeks and Mícheál Ó Fathartaigh (eds), *The Treaty: Debating and Establishing the Irish State*, Kindle location 5154-60

In a 2006 publication, the American academic Jason K. Knirck observed that the Irish parliament remained bicameral with a cabinet-style executive, both features derived from the 1921 Treaty. Northern Ireland also remained a devolved part of the UK,¹⁹⁰ while Ireland's two main political parties, Fine Gael and Fianna Fáil, were “direct descendants of the pro- and anti-Treaty wings of Sinn Fein”.¹⁹¹ In 2020 they formed a [coalition for the first time](#).

In September 2021, the [Embassy of Ireland](#) in London announced a programme of events to mark the centenary of the Treaty.¹⁹² This included an academic conference at University College Cork, an exhibition of [Sir John Lavery's Treaty portraits](#), a display of [archive material relating to the Treaty](#), a concert performance of Treaty songs, performances of a play called “The Treaty” by Colin Murphy, and a recreation of the Dáil's Treaty debates over two days on 22 December 2021 and 7 January 2022.¹⁹³

8.1

Further reading

Mícheál Ó Fathartaigh and Liam Weeks, *Birth of a State: The Anglo-Irish Treaty*, Dublin: Irish Academic Press, 2021

Gretchen Friemann, *The Treaty: The gripping story of the negotiations that brought about Irish independence and led to the Civil War*, Dublin: Merrion Press, 2021

Colum Kenny, *Midnight in London: The Anglo-Irish Treaty Crisis 1921*, Dublin: Eastwood Books, 2021

Liam Weeks and Micheal Ó Fathartaigh (eds), *The Treaty: Debating and Establishing the Irish State*, Dublin: Irish Academic Press, 2018

Ivan Gibbons, *The British Labour Party and the Establishment of the Irish Free State, 1918-1924*, London: Palgrave Macmillan, 2015

Jason K. Knirck, *Imagining Ireland's Independence: The Debates over the Anglo-Irish Treaty of 1921*, Lanham, MD: Rowman & Littlefield, 2006

Frank Gallagher, *The Anglo-Irish Treaty*, London: Hutchinson, 1965

Frank Pakenham, *Peace by ordeal: an account, from first-hand sources, of the negotiation and signature of the Anglo-Irish Treaty, 1921*, London: Jonathan Cape, 1935

¹⁹⁰ The bicameral Parliament of Northern Ireland was abolished via Westminster legislation in 1973

¹⁹¹ Jason K. Knirck, p182

¹⁹² This formed part of Ireland's [Decade of Centenaries](#) programme. [Until 1950 Ireland had a High Commissioner in London, after which it became an Ambassador](#). This reflected its departure from the British Commonwealth in 1948-49

¹⁹³ See Government of Ireland, [Centenary of the Anglo-Irish Treaty 1921: 2021 Programme](#)

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